Usool Shaashi

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Introduction

اَلْحَمْدُ لِلّٰہِ الَّذِیْ اَعْلٰی مَنْزِلَةَ الْمُؤْمِنِیْنَ بِکَرِیْمِ خِطَابِهٖ وَرَفَعَ دَرَجَةَ الْعَالِمِیْنَ بِمَعَانِیْ کِتَابِهٖ وَخَصَّ الْمُسْتَنْبِطِیْنَ مِنْهُمْ بِمَزِیْدِ الاِصَابَةِ وَثَوَابِهٖ

All praise belongs to ALLAAH, who has elevated the status of the Mu'mineen by means of his Noble speech and elevated the rank of the Ulama by*(granting them understanding of)***the meaning of His Book** *(the Quraan)***. He has bestowed upon those who extract rulings** *(of Shariaat)* **from amongst them** *(the Ulama)* **with increased favour and reward.**

وَالصَّلٰوةُ عَلَی النَّبِیِّ وَاَصْحَابِهٖ وَالسَّلَامُ عَلٰی اَبِیْ حَنِیْفَةَ وَاَحْبَابِهٖ

May peace descend upon His Nabi *(Hadhrat Muhammed □)* **and his Sahabah, and salutations upon Imaam Abu Hanifah □ and his students.**

The principles of Fiqh

وَبَعْدُ فَاِنَّ اُصُوْلَ الْفِقْهِ اَرْبَعَةٌ كِتَابُ اللهِ تَعَالىٰ وَسُنَّةُ رَسُوْلِهِ وَاِجْمَاعُ الأُمَّةِ وَالْقِيَاسُ فَلاَ بُدَّ مِنَ الْبَحْثِ فِىْ كُلِّ وَاحِدٍ مِنْ هٰذِهِ الاَقْسَامِ لِيُعْلَمَ بِذٰلِكَ طَرِيْقُ تَخْرِيْجُ الاَحْكَامِ

The Usool*(principles)***of Fiqh***(jurisprudence)* **are four;**

1- **The Book of ALLAAH** *(the Quraan)***,**
2- **Sunnat of Rasulullaah ***(Hadeeth)***,**
3- **Ijmaa***(consensus)***of the Ummat***(of Rasulullaah)***,**
4- **Qiyaas***(deduction)***.**

It is necessary to research and discuss each of these Usool*(principles)***separately so that one will be able to understand the method in which the Ahkaam***(laws)***of Shariaat are derived.**

Section One

The Book of ALLAAH

اَلْبَحْثُ الأَوَّلُ فِىْ كِتَابِ اللهِ

The first section, *(deals with the methods in which laws are derived from the)* **Book of ALLAAH**[1]**.**

Lesson one

Khaas and Aam

فَالْخَاصُّ لَفْظٌ وُضِعَ لِمَعْنٰى مَعْلُوْمٍ أَوْ لِمُسَمًّى مَعْلُوْمٍ عَلَى الاِنْفِرَادِ كَقَوْلِنَا فِىْ تَخْصِيْصِ الْفَرْدِ زَيْدٌ وَفِىْ تَخْصِيْصِ النَّوْعِ رَجُلٌ وَفِىْ تَخْصِيْصِ الْجِنْسِ اِنْسَانٌ

Khaas is a word which refers to a specific meaning or object without referring to anything else. An example of Khaas of an individual is the name Zaid *(this refers specifically to the individual whose name is Zaid and negates all other individuals)***, in specifying a class is the word Man**

[1]The Book of ALLAAH is the Quraan which ALLAAH Ta'ala revealed to Rasulullaah ﷺ, which has been recorded and narrated with Tawaatur *(i.e. it is reported in every generation by such a large number of people such that it is inconceivable for it to have been a lie.)*

(this refers specifically to the male gender and not the female gender) **and an example of specifying a species is the word human** *(This refers specifically to the human species and not other species such as animals, etc)***.**

وَالْعَامُ كُلُّ لَفْظٍ يَنْتَظِمُ جَمْعاً مِنَ الاَفْرَادِ اِمَّا لَفْظًا كَقَوْلِنَا مُسْلِمُوْنَ وَمُشْرِكُوْنَ وَاِمَّا مَعْنىً كَقَوْلِنَا مَنْ وَمَا

Aam is a word which refers to a number of individuals or items of a group *(at the same time)***, either by the word being plural such as the word Muslimeen or Mushrikeen** *(which refers to all of the Muslims or Mushriks at the same time)***, or in meaning such as the words مَنْ** (whoever) **and مَا** (whatever)**.**

The ruling of Khaas

وَحُكْمُ الْخَاصِّ مِنَ الْكِتَابِ وُجُوْبُ الْعَمَلِ بِهِ لاَ مَحَالَةَ فَاِنْ قَابَلَه خَبْرُ الْوَاحِدِ اَوِ الْقِيَاسُ فَاِنْ اَمْكَنَ الْجَمْعُ بَيْنَهُمَا بِدُوْنِ تَغْيِيْرٍ فِىْ حُكْمِ الْخَاصِّ يُعْمَلُ بِهِمَا وَ اِلاَّ يُعْمَلُ بِالْكِتَابِ وَيُتْرَكُ مَا يُقَابِلُه

The ruling of Khaas is to practise upon it entirely without any doubt. If Khabar Wahid *(Hadeeth)* **or Qiyaas** *(deduction)* **comes in opposition to it** *(a Khaas word of the Quraan)***; if it is possible to practice on both** *(Khabar Wahid or Qiyaas and the Khaas of the Quraan)* **without altering the ruling of Khaas then we will practice on both** *(Khabar Wahid or Qiyaas and the Khaas of the Quraan)* **and if this** *(to practice on both Khabar Wahid or Qiyaas without altering the ruling of Khaas)* **is not possible then we will practice upon the Khaas and disregard the Khabar Wahid or Qiyaas.**

Example one

مِثَالُه فِىْ قَوْلِهِ تَعَالىٰ {يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلٰثَةَ قُرُوْءٍ} فَاِنَّ لَفْظَةَ الثَّلٰثَةِ
خَاصٌّ فِىْ تَعْرِيْفِ عَدَدٍ مَعْلُوْمٍ فَيَجِبُ الْعَمَلُ بِهِ وَلَوْحُمِلَ الاَقْرَاءُ عَلَى
الاَطْهَارِكَمَا ذَهَبَ اِلَيْهِ الشَّافِعِىُّ بِاعْتِبَارِ اَنَّ الطُّهْرَ مُذَكَّرٌ دُوْنَ الْحَيْضِ وَقَدْ
وَرَدَ الْكِتَابُ فِى الْجَمْعِ بِلَفْظِ التَّانِيْثِ دَلَّ عَلٰى اَنَّه جَمْعُ الْمُذَكَّرِ وَ هُوَ
الطُّهْرُ لَزِمَ تَرْكُ الْعَمَلِ بِهٰذَا الْخَاصِّ لِاَنَّ مَنْ حَمَلَه عَلَى الطُّهْرِ لاَ
يُوْجِبُ ثَلٰثَةَ اَطْهَارٍ بَلْ طُهْرَيْنِ وَبَعْضَ الثَّالِثِ وَ هُوَ الَّذِىْ وَقَعَ فِيْهِ الطَّلاَقُ

An example of this *(disregarding Qiyaas for Khaas)* **is the verse of the Quraan;**

{يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلٰثَةَ قُرُوْءٍ}

"Divorced women should wait *(should abstain from remarrying)* **for <u>three</u> courses** *(after divorce, called Iddah)*."*(Surah Baqarah: 228)*

The word "three" is Khaas, representing a *(single and)* **specific amount** *(i.e. Three, no more and no less)* **and it is therefore compulsory to practice upon it** *(completely)***. If we were to say that the word 'قروء' (courses) refers to 'طهر' (purity), as Imaam Shaafie has, because the word purity is masculine plural** *(whereas the word "three" is feminine and the rule of Arabic grammar is that if a number is feminine then its subject will be masculine)* **and not the word Haidh** *(which is feminine in usage)***. The Quraan has used a plural which is feminine** *(the word 'ثلثة' - three)* **which proves that its subject is masculine plural which is 'طهر'- purity, then we will have to abandon practicing on the Khaas** *(if we accept the opinion of Imaam Shaafie * **because those who regard it** *('قروء'-courses)* **to refer to purity will not be able to complete**

three complete courses of purity but rather it will be two and a portion of the third, in which the Talaaq was issued.

فَيُخَرَّجُ عَلىٰ هٰذَا حُكْمُ الرَّجْعَةِ فِى الْحَيْضَةِ الثَّالِثَةِ وَزَوَالُه وَتَصْحِيْحُ نِكَاحِ الْغَيْرِ وَاِبْطَالُه وَحُكْمُ الْحَبْسِ وَالاِطْلاَقِ وَالْمَسْكَنِ وَالاِنْفَاقِ وَالْخُلْعِ وَالطَّلاَقِ وَتَزَوُّجِ الزَّوْجِ بِاُخْتِهَا وَاَرْبَعٍ سِوَاهَا وَاَحْكَامِ الْمِيْرَاثِ مَعَ كَثْرَةِ تَعْدَادِهَا

As a result of this *(difference of opinion),* **the rulings differ with regards to reconciliation** *(between the spouses)* **in the third Haidh** *(Ahnaaf say the husband has the right to reconcile as she is still in her Iddah)* **and its termination** *(Imaam Shaafie says they cannot reconcile because her Iddah has terminated)***, permissibility of marrying another** *(in the third Haidh, which according to Imaam Shaafie is permissible because her Iddah has terminated)***and its impermissibility** *(according to Ahnaaf because she is still in her iddah)***, the ruling of remaining in the house of iddah** *(according to Ahnaaf she cannot leave the house of Iddah as she is still in her iddah)* **or leaving** *(according to Imaam Shaafie her Iddah has terminated and she can therefore leave the house).(There is also a difference of opinion; whether is it compulsory to provide)***Housing and maintenance** *(according to Ahnaaf it is Waajib because she is still in Iddah whereas Imaam Shaafie says it is not as her Iddah has terminated)***,** *(permissibility of)* **Khul'a and Talaaq** *(Ahnaaf say Khul'a can be made as well as another Talaaq issued as she is still in Iddah whereas Imaam Shaafie says it is not permissible)***, marrying the sister of the wife or a fourth besides her** *(Imaam Shaafie * says it is permissible as her Iddah has terminated and as a result is no longer his spouse thus making it permissible for him to marry her sister and take a fourth wife as opposed to Ahnaaf who say it is impermissible because she is still his spouse on account of her Iddah still being

incomplete*)*, **as well as the many rulings with regards to inheritance** *(Ahnaaf say that if anyone of them pass away in the third Haidh then the other will inherit as before the termination of the Iddah they remain married whereas Imaam Shaafie* □ says they will not inherit from each other as her Iddah has already terminated)**.**

Example Two

وَكَذٰلِكَ قَوْلُهٗ تَعَالىٰ{ قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْہِمْ فِیٓ اَزْوَاجِهِمْ} خَاصٌّ فِي التَّقْدِيْرِ الشَّرْعِيِّ فَلاَ يُتْرَكُ الْعَمَلُ بِهِ بِاِعْتِبَارِ اَنَّهٗ عَقْدٌ مَالِيٌّ فَيُعْتَبَرُ بِالْعُقُوْدِ الْمَالِيَّةِ فَيَكُوْنُ تَقْدِيْرُ الْمَالِ فِيْهِ مَوْكُوْلاً اِلٰى رَأيِ الزَّوْجَيْنِ كَمَا ذَكَرَهُ الشَّافِعِيُّ رَحِمَہُ اللهُ تَعَالٰى

Similarly *(another example of disregarding Qiyaas for Khaas)* **is the verse of the Quraan;**

{ قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْہِمْ فِیٓ اَزْوَاجِهِمْ}

"Indeed We are aware of what *(injunctions)* **We have stipulated** *(especially)* **for them** *(the Mu'mineen)* **with regards to their wives."***(Surah Ahzaab: 50)*

(the words "We have stipulated) **is Khaas** *(specific)* **in the stipulation of the amount of Mehr** *(dowry)* **and therefore we will not abandon practicing on it by making Qiyaas** *(deducing)* **that it is the same as a monetary transaction and thus regard it as such by leaving the stipulation of Mehr to the opinion of the spouses, as Imaam Shaafie □ has.**

وَ فَرَّعَ عَلىٰ هٰذَا انَّ التَّخَلِّیَ لِنَفْلِ الْعِبَادَةِ اَفْضَلُ مِنَ الاِشْتِغَالِ بِالنَّكَاحِ وَاَبَاحَ اِبْطَالَهٗ بِالطَّلاَقِ كَيْفَ مَاشَآءَ الزَّوْجُ مِنْ جَمْعٍ وَّ تَفْرِيْقٍ وَاَبَاحَ اِرْسَالَ الثَّلٰثِ جُمْلَةً وَاحِدَةً وَ جَعَلَ عَقْدَ النِّكَاحِ قَابِلاً لِلْفَسْخِ بِالْخُلْعِ

As a result of this *(Imaam Shaafie equating* Nikaah to a monetary transaction he says that*)***remaining engaged in Nafl Ibaadat is superior to performing Nikaah, and it is permissible** *(for the husband to)* **terminate the Nikaah with Talaaq in whichever manner he desires either by issuing them all at once** *(in one period of purity as opposed to Ahnaaf who regard such a Talaaq as Bid'ah)* **or separate** *(one in each consecutive period of purity)* **or even all three** *(Talaaq)* **at once** *(is regarded as permissible by Imaam Shaafie as opposed to Ahnaaf who regard the one who issues such a Talaaq as a heinous sinner)***.** *(In addition since Imaam Shaafie has equated Nikaah to a monetary transaction he says that)***The contract of Nikaah is annulled by Khul'a** *(whereas Ahnaaf say that Khul'a is a Talaaq-Baa'in)***.**

Example three

وَكَذٰلِكَ قَوْلُهٗ تَعَالىٰ {حَتّٰى تَنْكِحَ زَوْجاً غَيْرَهٗ} خَاصٌّ فِىْ وُجُوْدِ النِّكَاحِ مِنَ المَرْأَةِ فَلاَ يُتْرَكُ الْعَمَلُ بِمَا رُوِىَ عَنِ النَّبِىِّ عَلَيْهِ السَّلاَمُ ''اَيُّمَا اِمْرَاَةٍ نَكَحَتْ نَفْسَهَا بِغَيْرِ اِذْنِ وَلِيِّهَا فَنَكِاحُهَا بَاطِلٌ بَاطِلٌ بَاطِلٌ

Similarly *(an example of disregarding Khabar Wahid for Khaas)* **is the verse of the Quraan,**

{حَتّٰى تَنْكِحَ زَوْجاً غَيْرَهٗ}

"*(If he divorced her the third time then she is not lawful for him thereafter)* **until she marries another husband."** *(Surah Baqarah: 230)*

(the words "She marries" is Khaas which means that the person who actually contracts the marriage is the woman) **which is Khaas in Nikaah being correct if carried out by a woman so we will not abandon acting on it** *(Khaas)* **because of what has been narrated from Rasulullaah , "Whichever**

women will perform her Nikaah without the permission of her Walie *(father or Shar'ie representative)* **then her Nikaah is invalid, invalid, invalid"***(as Imaam Shaafie □ has)***.**

وَيَتَفَرَّعُ مِنْهُ الْخِلَافُ فِىْ حَلِّ الْوَطْئِ وَلُزُوْمِ الْمَهْرِ وَالنَّفَقَةِ وَالسُّكْنٰى
وَوَقُوْعِ الطَّلَاقِ وَالنِّكَاحِ بَعدَ الطَّلَقَاتِ الثَّلٰثِ عَلٰى مَاذَهَبَ اِلَيْهِ قُدَمَاءَ
اَصْحَابِهِ بِخِلَافِ مَا اخْتَارَهُ الْمُتَاخِّرُوْنَ مِنْهُمْ

As a result of this *(difference of opinion that a woman can perform her own Nikaah according to Ahnaaf but according to Imaam Shaafie □ the Nikaah is invalid)* **there is difference of opinion regarding the permissibility of intercourse** *(Ahnaaf say it is permissible as the Nikaah is valid but according to Imaam Shaafie □ intercourse is impermissible as the Nikaah is invalid)***, incumbency of Mehr** *(dowry)***, maintenance and housing** *(Ahnaaf say it is compulsory on account of the Nikaah being valid and Imaam Shaafie □ says it is not as the Nikaah is invalid)***, whether Talaaq is valid** *(according to Ahnaaf it is valid whereas Imaam Shaafie □* says it is not as the Nikaah is invalid)**, and***(if)***Nikaah** *(with the same person is valid)* **after issuing three Talaaq***(in this Nikaah)* **according to the opinion of the earlier Shaafie scholars** *(Ahnaaf say Nikaah is only permissible after 'Halalah', i.e. she marries another person, consummates the marriage and is divorced after which it will be permissible for her to remarry the first husband, whereas Imaam Shaafie □ and the earlier scholars of the Shaafie Madhab on account of the Nikaah being invalid say the three Talaaq did not apply and it is therefore permissible for her to marry)***as opposed to the stance adopted by the latter Shaafie scholars** *(who hold the same view as Ahnaaf that it is only permissible for her to remarry the first husband after 'Halalah')***.**

Definition of Aam

وَاَمَّا الْعَامُّ فَنَوْعَانِ عَامٌ خُصَّ عَنْهُ الْبَعْضُ وَعَامٌّ لَم يُخَصَّ عَنْهُ شَئٌ فَالْعَامُّ الَّذِىْ لَمْ يُخَصَّ عَنْهُ شَئٌ فَهُوَ بِمَنْزِلَةِ الْخَاصِّ فِىْ حَقِّ لُزُوْمِ الْعَمَلِ بِهِ لاَ مُحَالَةَ

Aam *(A word which refers to a number of individuals or items of a group at the same time)* **is of two types;** *(*the first is) **Aam in which some of it** *(the individuals or items of the group)* **have been excluded and** *(the second is)* **Aam in which nothing** *(none of its individuals or items)* **have been excluded.**

Aam Ghair Makhsoosul Ba'adh

فَالْعَامُّ الَّذِىْ لَمْ يُخَصَّ عَنْهُ شَئٌ فَهُوَ بِمَنْزِلَةِ الْخَاصِّ فِىْ حَقِّ لُزُوْمِ الْعَمَلِ بِهِ لاَ مُحَالَةَ

The*(the ruling for)* **Aam in which nothing has been excluded***(known as 'Aam Ghair Makhsoosul Ba'adh)* **is the same as Khaas in that it is incumbent to practise upon it entirely without any doubt.**

Example One

وَعَلٰى هٰذَا قُلْنَا اِذَا قُطِعَ يَدُ السَّارِقِ بَعْدَ مَا هَلَكَ الْمَسْرُوْقُ عِنْدَهٗ لاَ يَجِبُ عَلَيْهِ الضَّمَانُ لاَنَّ الْقَطْعَ جَزَاءُ جَمِيْعِ مَا اكْتَسَبَهُ السَّارِقُ فَاِنَّ كَلِمَةَ مَا عَامَّةٌ يَتَنَاوَلُ جَمِيْعَ مَا وُجِدَ مِنَ السَّارِقِ وَ بِتَقْدِيْرِ اِيْجَابِ الضَّمَانِ يَكُوْنُ الْجَزَاءُ هُوَ الْمَجْمُوْعُ وَلاَ يُتْرَكُ الْعَمَلُ بِهِ بِالْقِيَاسِ عَلَى الْغَضَبِ

Based upon this *(That 'Aam Ghair Makhsoosul Ba'adh' is the same as Khaas in that it is incumbent to practise upon it entirely without any doubt)* **we say, when the hand of a thief is cut after the stolen item has been lost, then 'Dhamaan** *(to claim the value of the stolen goods from the thief)* **will not be**

Waajib because cutting the hand of the thief is punishment for all the crimes the thief has committed as the word 'ما' *(in the verse,*

" السَّارِقَ وَالسَّارِقَةُ فَاقْطَعُوْا اَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا "

*As for the male and female thief, cut of their (right) hands as punishment for what (all) they earn {from the sin of stealing})***is Aam and includes all** *(the crimes)* **that the thief perpetrated and in making 'Dhamaan' Waajib, the punishment** *(instead of being one)* **will be increased** *(as then the punishment will be two; cutting off the hand and 'Dhamaan')*. **We will not abandon practicing on it** *(the general and comprehensive nature of Aam, that cutting off the hand is the punishment for all his crimes)* **by making Qiyaas** *(comparing it)* **to Ghasab** *(forceful seizure, hijacking, etc, as Imaam Shaafie* has)**.**

Proof that 'ما' is Aam

وَالدَّلِيْلُ عَلٰى اَنَّ كَلِمَةَ مَا عَامَّةٌ مَا ذَكَرَهُ مُحَمَّدٌ رَحِمَهُ اللهُ تَعَالٰى اِذَا قَالَ الْمَوْلٰى لِجَارِيَتِهِ إِنْ كَانَ مَا فِيْ بَطْنِكِ غُلَامًا فَأَنْتِ حُرَّةٌ فَوَلَدَتْ غُلاَماً وَجَارِيَةً لاَ تُعْتَقُ

The proof that the word 'ما' is Aam is what Imaam Muhammed has mentioned, "If a master tells his female slave, "If what *(all)* **is in your womb is a boy then you are free" and then gives birth to** *(twins)* **a boy and a girl then she will not be set free** *(because the word 'ما' includes and refers to all and everything that is in her womb)***.**

Example Two

وَ بِمِثْلِهِ نَقُوْلُ فِيْ قَوْلِهِ تَعَالىٰ {فَاقْرَأُوْا مَا تَيَسَّرَمِنَ الْقُرْآنِ} فَاِنَّهٗ عَامٌّ فِيْ جَمِيْعِ مَا تَيَسَّرَ مِنَ الْقُرْآنِ وَمِنْ ضَرُوْرَتِهِ عَدْمُ تَوَقُّفِ الْجَوَازِ عَلٰى قِرَأَةِ الْفَاتِحَةِ وَجَآءَ فِي الْخَبَرِ اَنَّهُ قَالَ لاَ صَلٰوةَ اِلاَّ بِفَاتِحَةِ الْكِتَابِ فَعَمِلْنَا بِهِمَا عَلٰى وَجْهٍ لاَ يَتَغَيَّرُ بِهِ حُكْمُ الْكِتَابِ بِأَنْ نَحْمِلَ الْخَبَرَ عَلٰى نَفْيِ الْكَمَالِ حَتّٰى يَكُوْنَ مُطْلَقُ الْقِرَأَةِ فَرْضًا بِحُكْمِ الْكِتَابِ وَقِرَأَةُ الْفَاتِحَةِ وَاجِبَةٌ بِحُكْمِ الْخَبَرِ

In a similar manner we say regarding the verse,

{فَاقْرَأُوْا مَا تَيَسَّرَمِنَ الْقُرْآنِ}

"Recite that which is easy."*(Surah Muzzammil: 20)*

That it is Aam and includes the entire Quraan whichever may be easy *(for the Musallee to read)* **and from its requisites** *(of Aam)* **the permissibility of Salaah will not be dependent upon the recitation of Surah Faatihah** *(as Imaam Shaafie* □ has stated, *i.e. Surah Faatihah will not be Fardh as the verse above states that any portion of the Quraan which the Musallee finds easy to read is Fardh)***. It has come in Hadeeth that Rasulullaah □ has said, "There is no Salaah without the recitation of Surah Faatihah" which we will practice upon in conjunction with the verse in a manner that will not change the order of the Quraan** *(which permits recitation of any portion of the Quraan)* **by concluding that the Hadeeth negates perfection** *(that Salaah is not perfect or complete without Surah Faatihah even though valid)* **such that reciting any portion of the Quraan will be Fardh in accordance with the order of the Quraan and reciting Surah Faatihah will be Waajib in accordance with the Hadeeth.**

Example Three

وَقُلْنَا كَذٰلِكَ فِيْ قَوْلِهِ تَعَالىٰ{ وَلاَ تَأكُلُوْا مِمَّا لَمْ يُذْكَرِ اسْمُ اللهِ عَلَيْهِ} اِنَّهٗ يُوْجِبُ حُرْمَةَ مَتْرُوْكِ التَّسْمِيَةِ عَامِداً وَجَآءَ فِى الْخَبَرِ اَنَّهٗ عَلَيْهِ السَّلاَمُ سُئِلَ عَنْ مَتْرُوْكِ التَّسْمِيَةِ عَامِداً فَقَالَ كُلُوْهُ فَاِنَّ تَسْمِيَةَ اللهِ تَعَالىٰ فِى قَلْبِ كُلِّ امرَأٍ مُسْلِمٍ فَلاَ يُمْكِنُ التَّوْفِيْقَ بَيْنَهُمَا لِاَنَّهٗ لَوْ ثَبَتَ الْحِلُّ بِتَرْكِهَا عَامِداً لَثَبَتَ الْحِلُّ بِتَرْكِهَا نَاسِياً فَحِيْنَئِذٍ يَرْتَفِعُ حُكْمُ الْكِتَابِ فَيُتْرَكُ الْخَبَرُ

In a similar manner we say regarding the verse,

{ وَلاَ تَأكُلُوْا مِمَّا لَمْ يُذْكَرِ اسْمُ اللهِ عَلَيْهِ}

"Do not eat from *(the meat of)* **that** *(animal)* **on which ALLAAH's name was not taken** *(when it was slaughtered)***."**
(Surah An'aam: 121)

(That it is Aam and) **forbids that** *(all meat)* **on which ALLAAH's name was omitted intentionally** *(even if it is slaughtered by a Muslim)***. It has been mentioned in Hadeeth that Rasulullaah was asked about** *(the animal on which)* **ALLAAH's name** *(is)* **not taken intentionally** *(when slaughtering)* **and he replied, "Eat! For undoubtedly Allah's name is in the heart of every Muslim"***(because of which Imaam Shaafie* says; if a Muslim intentionally omits Tasmiyyah then too the meat is Halaal)**. It is not possible to reconcile between the verse of the Quraan and Hadeeth because if it is proven that it** *(the meat)* **is Halaal when** *(Tasmiyyah- Allah's name is)* **omitted intentionally then it will** *(most certainly)* **be proven to be Halaal when omitted unintentionally and this would result in the verse of the Quraan being abandoned** *(entirely, which is why)***, the Hadeeth will be disregarded** *(and the animal on which ALLAAH's name has been omitted intentionally will be regarded as Haraam)***.**

Example Four

وَكَذٰلِكَ قَوْلُهٗ تَعَالىٰ {وَأَمَّهَاتُكُمُ اللاَّ تِىْ أَرْضَعْنَكُمْ } يَقْتَضِىْ بِعُمُوْمِهِ حُرْمَةَ نِكَاحِ الْمُرْضِعَةِ وَقَدْ جَاءَ فِى الْخَبَرِ لاَ تَحْرِمُ الْمَصَّةُ وَلاَ الْمَصَّتَانِ وَلاَ الاِمْلاَجَةُ وَلاَ الاِمْلاَجَتَانِ فَلَمْ يُمْكِنِ التَّوْفِيْقَ بَيْنَهُمَا فَيُتْرَكُ الْخَبَرُ

Similarly is the verse,

{وَأَمَّهَاتُكُمُ اللاَّ تِىْ أَرْضَعْنَكُمْ }

"*(Also Haraam for you to marry is)* **Your suckling mothers** *(those women who breastfed you before you turned two years of age. All the daughters, granddaughters, sisters, aunts, mothers, and grandmothers of the suckling mother may also not marry the child she breastfed)*." *(Surah Nisaa: 23)*

The general connotation of which dictates that it is impermissible for one to marry the woman who breastfed him *(in all circumstances)*. **It has been reported in Hadeeth, "Sucking once or twice does not establish Hurmat** *(impermissibility to marry)* **nor does inserting** *(the nipple)* **once or twice** *(in the mouth establish impermissibility to marry)*. **Since it is not possible to reconcile the verse of the Quran with the Hadeeth we will disregard the Hadeeth** *(and say that it is impermissible to marry one's suckling mother even if one sucked only once or twice as opposed to Imaam Shaafie who says that Hurmat is only established after drinking five gulps)*.

Aam Makhsoosul Ba'adh

وَ أَمَّا الْعَامُّ الَّذِىْ خُصَّ عَنْهُ الْبَعْضُ فَحُكْمُهُ اَنَّهٗ يَجِبُ الْعَمَلُ بِهِ فِى الْبَاقِىْ مَعَ الاِحْتِمَالِ

As far as the Aam in which some of it *(the individuals or items of the group)* **have been excluded** *(known as Aam Makhsoosul Ba'adh)* **its ruling is that it is Waajib to practice upon it for the rest** *(of those who have not been excluded)* **with the probability that the others may be excluded as well.**

فَاِذَا قَامَ الدَّلِيْلُ عَلٰى تَخْصِيْصِ الْبَاقِىْ يَجُوْزُ تَخْصِيْصُه بِخَبَرِ الْوَاحِدِ وَالْقِيَاسِ اِلٰى أَنْ يَّبْقٰى الثَّلٰثُ وَ بَعْدَ ذٰلِكَ لاَ يَجُوْزُ فَيَجِبُ الْعَمَلُ بِهِ

Thus if proof is established which excludes the rest then it will be permissible to exclude it with Khabar Wahid *(Hadeeth)* **or Qiyaas as long as three** *(individuals or items)* **are left** *(under the ruling of Aam)* **after that is will not be permissible to exclude any other from it and it will be Waajib to practice on it** *(the Aam Makhsoosul Ba'adh in which its constituents have been removed until only three remain)***.**

وَاِنَّمَا جَازَ ذٰلِكَ لِاَنَّ الْمُخَصِّصَ الَّذِىْ اَخْرَجَ الْبَعْضَ عَنِ الْجُمْلَةِ لَوْ اَخْرَجَ بَعْضًا مَجْهُوْلاً يَثْبُتُ الاِحْتَمَالُ فِىْ كُلِّ فَرْدٍ مُعَيَّنٍ فَجَازَ أَن يَّكُوْنَ بَاقِياً تَحْتَ حُكْمِ الْعَامِّ وَ جَازَأَنْ يَكُوْنَ دَاخِلاً تَحْتَ دَلِيْلِ الْخُصُوْصِ فَاسْتَوىٰ الطَّرْفَانِ فِىْ حَقِّ الْمُعَيَّنِ

This exclusion *(excluding individuals or items with Khabar Wahid or Qiyaas after some have been excluded by a Qath'ie proof- regarding which there is no doubt to its authenticity and meaning)* **is permissible because the proof which excluded some of the unknown constituents** *(individuals or items that are included in it)* **from Aam establishes the probability that certain known constituents may be excluded as well.** *(The explanation of this is)* **It is permissible that the constituent** *(individual or item)* **is still included under the ruling of Aam** *(that the ruling still applies to it as it has not been excluded)* **or it is permissible to included the constituent** *(individual or*

item) **in the proof of exclusion** *(and say that it too has been excluded from the ruling)***. Thus for each known individual** *(or item)* **both sides** *(i.e. to either remain under Aam or be excluded by the proof)* **is the same.**

فَاذَا قَامَ الدَّلِيْلُ الشَّرْعِيُّ عَلٰى أَنَّهٗ مِنْ جُمْلَةِ مَا دَخَلَ تَحْتَ دَلِيْلِ الْخُصُوْصِ تَرَجَّحَ جَانِبُ تَخْصِيْصِهِ

Thus when a Shar'ie proof has been established that it is included in the proof which excludes it from the ruling then the side of exclusion will be given preference *(and the individual or item will be excluded from the ruling of Aam)***.**

وَاِنْ كَانَ الْمُخَصِّصُ اَخْرَجَ بَعْضًا مَعْلُوْماً عَنِ الْجُمْلَةِ جَازَ أَنْ يَكُوْنَ مَعْلُوْلاً بِعِلَّةٍ مَوْجُوْدَةٍ فِى هٰذَا الْفَرْدِ الْمُعَيَّنِ فَاذَا قَامَ الدَّلِيْلُ الشَّرْعِيُّ عَلٰى وُجُوْدِ تِلْكَ الْعِلَّةِ فِىْ غَيْرِ هٰذَا الْفَرْدِ الْمُعَيَّنِ تَرَجَّحَ جِهَةُ تَخْصِيْصِهِ فَيُعْمَلُ بِه مَعَ وُجُوْدِ الْاِحْتِمَالِ

If the proof which excludes part of its known constituents *(individuals or items)* **from its ruling then it is possible it is because of a specific illat** *(property or characteristic)* **found in that individual** *(or item)* **and if Shar'ie proof is established which proves that the very same Illat** *(property or characteristic)* **is found in another besides this specific individual** *(in whom the Illat was found)* **then we will given preference to it being excluded** *(i.e. it too does not fall under the ruling or Aam and has been excluded from its ruling)* **and we will practice on** *(the remaining constituents of)* **Aam** *(Makhsoosul Ba'adh)* **with the probability that more may be excluded.**

Lesson on Mutlaq and Muqayyad

فصل فی المطلق والمقید ذَهَبَ اَصْحَابُنَا اِلیٰ اَنَّ الْمُطْلَقَ مِنْ كِتَابِ اللهِ تَعَالیٰ اِذَا اَمْكَنَ الْعَمَلُ بِاِطْلَاقِهِ فَالزِّيَادَةُ عَلَيْهِ بِخَبَرِ الْوَاحِدِ وَ الْقِيَاسِ لَا يَجُوْزُ

Our scholars *(scholars of the Hanafi Madhab)* **have taken the stance that if it is possible to practice upon the Mutlaq** *(a word having a specific meaning that* <u>*does not*</u> *have a restrictive clause attached to it)* **of the Quraan unrestrictedly** *(without adding any clause to it)* **then it is not permissible to add to it** *(add a clause to it)* **using Khabar Wahid** *(Hadeeth)* **or Qiyaas.**

Note: - Muqayyad is a word having a specific meaning that has a restrictive clause attached to it.

<u>Example One</u>

مِثَالُهُ فِیْ قَوْلِهِ تَعَالیٰ {فَاغْسِلُوْاوُجُوْهَكُمْ} فَالْمَا مُوْرُ بِهِ هُوَ الْغَسْلُ عَلٰى الاِطْلَاقِ فَلاَ يُزَادُ عَلَيْهِ شَرْطُ النِّيَّةِ وَالتَّرْتِيْبِ وَالْمُوْلَاةِ وَالتَّسْمِيَةِ بِالْخَبَرِ وَلٰكِنْ يُعْمَلُ بِالْخَبَرِ عَلٰى وَجْهٍ لَا يَتَغَيَّرُ بِهِ حُكْمُ الْكِتَابِ فَيُقَالُ الْغَسْلُ الْمُطْلَقُ فَرْضٌ بِحُكْمِ الْكِتَابِ وَالنِّيَّةُ سُنَّةٌ بِحُكْمِ الْخَبَرِ

An example of this *(that it is not permissible to add a clause to the Mutlaq of the Quraan using Khabar Wahid or Qiyaas when it is possible to practice on it unrestrictedly)* **is the verse** *(of Wudhu)***,**

{فَاغْسِلُوْاوُجُوْهَكُمْ}

"Wash your faces" *(Surah Maa'idah: 6)*

Ghusal with no additional clauses has been ordered in this verse so we will not add to it the clause of Niyyat *(to make intention for Wudhu as Imaam Shaafie has)***, Tarteeb** *(to*

make Wudhu in the correct sequence as Imaam Shaafie has), **Muwaalaat***(to wash each part before the previous one dries as Imaam Maalik* has*)* **and Tasmiyyah***(to recite Bismillaah as Imaam Dawood Thaahirie has , and say they are Fardh when making wudhu as the Quraan has ordered one to wash without any additional clauses or restrictions)* **using Khabar Wahid. Instead we act upon the Khabar Wahid** *(Hadeeth)* **in such a manner that will not alter the ruling of the Quraan so we will say that that washing the face, etc is Fardh in accordance with the ruling of the Quraan and Niyyat** *(as well as Tarteeb, Muwaalaat and Tasmiyyah)* **is Sunnat in accordance with Khabar Wahid** *(Hadeeth)***.**

Example Two

وَكَذٰلِكَ قُلْنَا فِىْ قَوْلِهِ تَعَالىٰ {اَلزَّانِيَةُ وَالزَّانِىْ فَاجْلِدُوْا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ} اِنَّ الْكِتَابَ جَعَلَ جَلْدَ الْمِائَةِ حَداً لِلزِّنَا فَلَا يُزَادُ عَلَيْهِ التَّغْرِيْبُ حَدًّا لِقَوْلِهِ عَلَيْهِ السَّلَامُ اَلْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَ تَغْرِيْبُ عَامٍ بَلْ يُعْمَلُ بِالْخَبَرِ عَلٰى وَجْهٍ لاَ يَتَغَيَّرُ بِهِ حُكْمُ الْكِتَابِ فَيَكُوْنُ الْجَلْدُ حَداً شَرْعِيّاً بِحُكْمِ الْكِتَابِ وَالتَّغْرِيْبُ مَشْرُوْعاً سِيَاسَةً بِحُكْمِ الْخَبَرِ

Similarly *(just as in the example above where the Mutlaq of the Quraan was not changed by Khabar Wahid)* **we say regarding the verse,**

{اَلزَّانِيَةُ وَالزَّانِىْ فَاجْلِدُوْا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ}

"The *(unmarried)* **female and male who commit fornication should both be given a hundred lashes** *(when the act of fornication is conclusively proven in a court of Shari'ah)***."**
(Surah Noor: 2)

The Quraan has made one hundred lashes the punishment for Zinaa *(fornication)* **so we will not add exile to it as a**

punishment *(as the verse is Mutlaq, not having any additional clauses or restrictions)* **from the Hadeeth of Rasulullaah ; "If an unmarried man fornicates with an unmarried woman then give them both a hundred lashes and exile them"***(as Imaam Shaafie has)***. Instead we will practice on the Hadeeth in a manner that will not add to the ruling of the Quraan by one hundred lashes being the Shar'ie punishment in accordance with the Quraan and exile permissible under certain circumstances in accordance with the Hadeeth** *(thus the Mutlaq of the Quraan will not have any additional clauses added to it as is the viewpoint of Ahnaaf)***.**

Example Three

وَكَذٰلِكَ قَوْلُهُ تَعَالىٰ { وَلْيَطَّوَّفُوْا بِالْبَيْتِ الْعَتِيْقِ} مُطْلَقٌ فِىْ مُسَمَّى الطَّوَافِ بِالْبَيْتِ فَلاَ يُزَادُ عَلَيْهِ شَرْطُ الْوُضُوْءِ بِالْخَبَرِ بَلْ يُعْمَلُ بِهِ عَلٰى وَجْهٍ لاَ يَتَغَيَّرُ بِهِ حُكْمُ الْكِتَابِ بِأَنْ يَكُوْنَ مُطْلَقُ الطَّوَافِ فَرْضًا بِحُكْمِ الْكِتَابِ وَالْوُضُوْءُ وَاجِبًا بِحُكْمِ الْخَبَرِ فَيُجْبَرُ النُّقْصَانُ اللاَّزِمُ بِتَرْكِ الْوُضُوْءِ الْوَاجِبِ بِالدَّمِ

Similarly *(just as in the example above where the Mutlaq of the Quraan was not changed by Khabar Wahid)* **is the verse,**

{ وَلْيَطَّوَّفُوْا بِالْبَيْتِ الْعَتِيْقِ}

"And perform Tawaaf around the Freed House *(The Ka'abah, which has been freed from tyrants)***."** *(Surah Hajj: 29)*

Which is Mutlaq *(free from any restrictive clauses)* **in describing the Tawaaf round the Ka'abah so we will not add to it the condition** *(prerequisite)* **of Wudhu** *(by making Wudhu Fardh for Tawaaf as Imaam Shaafie has)* **from Hadeeth but will practice on it in a manner whereby we**

will not change the ruling of the Quraan by making Tawaaf itself Fardh in accordance with the Quraan and Wudhu Waajib in accordance with the Hadeeth and the inevitable deficiency caused by abandoning Wudhu which is Waajib is offering Dam*(sacrifice)***.**

Example four

وَكَذٰلِكَ قَوْلُهٗ تَعَالىٰ {وَارْكَعُوْا مَعَ الرَّاكِعِيْنَ } مُطْلَقٌ فِىْ مُسَمَّى الرُّكُوْعِ فَلاَ يُزَادُ عَلَيْهِ شَرْطُ التَّعْدِيْلِ بِحُكْمِ الْخَبَرِ وَلٰكِنْ يُعْمَلُ بِالْخَبَرِ عَلٰى وَجْهٍ لاَ يَتَغَيَّرُ بِهِ حُكْمُ الْكِتَابِ فَىَكُوْنُ مُطْلَقُ الرُّكُوْعِ فَرْضاً بِحُكْمِ الْكِتَابِ وِالتِّعْدِيْلُ وَاجِباً بِحُكْمِ الْخَبَرِ

Similarly *(just as in the example above where the Mutlaq of the Quraan was not changed by Khabar Wahid)* **is the verse,**

{وَارْكَعُوْا مَعَ الرَّاكِعِيْنَ }

Which is Mutlaq *(free from any restrictive clauses)* **in describing Ruku, so we will not add to it** *(the ruling of the Quraan)* **the condition of Ta'adeel** *(to carry out all the postures of patiently and without rushing)* **from Khabar Wahid** *(Hadeeth, as Imaam Shaafie and Imaam Abu Yusuf have)* **but** *(instead)* **will practice on the Khabar Wahid in a manner where we will not alter the ruling of the Quraan by making Ruku itself Fardh in accordance with the Quraan and Ta'adeel Waajib in accordance with the Hadeeth.**

A deduction made from the ruling of Mutlaq

وَ عَلىٰ هٰذَا قُلْنَا: يَجُوْزُ التَّوَضِّىْ بِمَاءِ الزَّعْفَرَانِ وَبِكُلِّ مَاءٍ خَالَطَهٗ شَىئ طَاهِرٌ فَغَيَّرَ اَحَدَ اَوْصَافِهِ

Based upon this *(principle that the Mutlaq of the Quraan will remain as such and will not have a restrictive clause added to it)* **we say it is permissible to perform Wudhu with saffron water and any** *(type of)* **water in which something pure has been mixed causing one of its** *(three)* **qualities** *(taste, colour, smell)* **to change.**

لِاَنَّ شَرْطَ الْمَصِيْرِ اِلىٰ التَّيِمُّمِ عَدْمُ مُطْلَقِ الْمَاءِ وَهٰذَا قَدْ بَقِىَ مَاءً مُطْلَقاً فَاِنَّ قَيْدَ الْاِضَافَةِ مَا اَزَالَ عَنْهُ اِسْمَ الْمَاءِ بَلْ قَرَّرَه ۥ فَيَدْخُلُ تَحْتَ حُكْمِ مُطْلَقِ الْمَاءِ وَكَانَ شَرْطُ بَقَائِهِ عَلىٰ صِفَةِ الْمُنْزَّلِ مِنَ السَّمَاءِ قَيْداً لِهٰذَا لْمُطْلَقِ وَبِهِ يُخَرَّجُ حُكْمُ مَاءِ الزَّعْفَرَانِ وَالصَّابُوْنِ وَالْاَ شْنَانِ وَاَمْثَالِهِ

The reason for this *(permissibility to use such water)* **is that the condition for permissibility of Tayammum is the complete absence of any form of water and this** *(saffron water and water in which something pure has been mixed causing one of its qualities to change)* **still remains a type of water as the attached clause** *(of saffron and of whatever has been mixed with the water)* **does not remove the suffix of water from it** *(and it is stilled called saffron-water)* **and instead establishes that it is water and will therefore fall under the category of water. To maintain that the water must remain in the condition it came from the sky** *(as Imaam Shaafie has done)* **is a restrictive clause for this Mutlaq** *(of the Quraan)* **and in doing so** *(adding this restrictive clause)* **others types of water such as saffron water, soapy water, perfumed water, etc will be excluded** *(and not regarded as water with which Wudhu can be performed)***.**

وَخَرَجَ عَنْ هٰذِهِ الْقَضِيَّةِ الْمَاءُ النَّجِسُ بِقَوْلِهِ تَعَالىٰ {وَلٰكِنْ يُّرِيْدُ لِيُطَهِّرَكُمْ} وَالنَّجِسُ لَا يُفِيْدُ الطَّهَارَةَ وَبِهٰذِهِ الْاِشَارَةِ عُلِمَ اَنَّ الْحَدَثَ شَرْطٌ لِوُجُوْبِ الْوُضُوْءِ فَاِنَّ تَحْصِيْلَ الطَّهَارَةِ بِدُوْنِ وُجُوْدِ الْحَدَثِ مُحَالٌ

And excluded from this rule *(that these waters still remain a type of water with which wudhu can be made because of it having the suffix water attached to it)* **is Najas** *(impure water)* **because of the verse,**

{وَلٰكِنْ يُّرِيْدُ لِيُطَهِّرَكُمْ}

"But wants to purify you."(Surah Maa'idah: 6)

As Najas *(impure water)* **does not aid in purification. We also learn from this verse** *("but want to purify you")* **that in order for Wudhu to be Waajib one must be in a state of Hadath** *(lesser impurity)* **first as purification is impossible without Hadath.**

Example five

قَالَ أَبُوْحَنِيْفَةَ رَحِمَهُ اللهُ تَعَالٰى اَلْمُظَاهِرُ اِذَا جَامَعَ اِمْرَأَتَهٗ فِىْ خِلاَلِ الاِطْعَامِ لاَ يَسْتَأْنِفُ الاِطْعَامَ لأَنَّ الْكِتَابَ مُطْلَقٌ فِىْ حَقِّ الاِطْعَامِ فَلاَ يُزَادُ عَلَيْهِ شَرْطُ عَدْمِ الْمَسِيْسِ بِالْقِيَاسِ عَلٰى الصَّوْمِ بَلِ الْمُطْلَقُ يَجْرِىْ عَلٰى اِطْلاَقِهِ وَالْمُقَيَّدُ عَلٰى تَقْيِيْدِهِ

Imaam Abu Hanifah said, "If a Mathaahir[1] *(a man who compared his wife to one of his blood relatives such as his mother, sister, daughter, etc)* **indulges in intercourse with his wife while feeding** *(the sixty poor people and before sixty are fed)* **then there is no need to restart the feeding again** *(the feeding will not be rendered void as in the case with fasting)*

[1] It is impermissible for such a person to indulge in sexual intercourse or even kiss his wife after comparing his wife to his blood relatives or any of their limbs. If he wishes to revoke his statement then he must give a Kaffaarah (penalty) of setting a slave free before he can indulge in any physical relation with her. If he is unable to do this then he should fast for two consecutive months before he can indulge in any physical relation with her. If he has intercourse with his wife before completing the fast of two months then this Kaffaarah will be rendered void and he will have to fast for another two consecutive months. If this too is not possible then he should feed sixty poor people, however this does not have the restrictive clause of having to be before physical action.

because the Quraan is Mutlaq with regards to feeding *(and does not have the restrictive clause of having to be before intercourse)* **so we will not add the restrictive clause of being before intercourse by making Qiyaas** *(comparing it to)***fasting. Instead what is Mutlaq will be kept unrestricted and what is Muqayyad will be kept restricted** *(to the clause attached to it)***.**

وَكَذٰلِكَ قُلْنَا اَلرَّقَبَةُ فِىْ كَفَّارَةِ الظِّهَارِ وَالْيَمِيْنِ مُطْلَقَةٌ فَلاَ يُزَادُ عَلَيْهِ شَرْطُ الايْمَانِ بِالْقِيَاسِ عَلٰى كَفَّارَةِ الْقَتْلِ

In a similar manner *(as the ruling just mentioned above of feeding the poor being Mutlaq)* **we say the slave that has to be set free in the Kaffaarah of Thihaar** *(when one compares his wife to a blood relative)* **and of Yameen** *(breaking an oath)* **is** *(also)* **Mutlaq** *(and does not have any clause attached to it stipulating that it has to be a Muslim slave)* **so we will not add the clause of** *(the slave)* **having Imaan to it by making Qiyaas** *(comparing it)***to Kaffaarah of murder** *(where the restrictive clause of the slave being Mu'min was mentioned)***.**

An objection

فَاِنْ قِيْلَ اِنَّ الْكِتَابَ فِىْ مَسْحِ الرَّأْسِ يُوْجِبُ مَسْحَ مُطْلَقِ الْبَعْضِ وَقَدْ قَيَّدْ تُمُوْهُ بِمِقْدَارِ النَّاصِيَةِ بِالْخَبَرِ وَالْكِتَابُ مُطْلَقٌ فِىْ اِنْتِهَاءِ الْحُرْمَةِ الْغَلِيْظَةِ بِالنِّكَاحِ وَقَدْ قَيَّدْتمُوْهُ بِالدُّخُوْلِ بِحَدِيْثِ اِمْرَأَةِ رِفَاعَةَ

(Firstly) **If anyone were to say** *(object by saying)* **that the Quraan with regards to Masah** *(passing wet hands)* **over the head makes Mutlaq Masah** *(passing the hands over the head without specifying any margin)* **of a small portion Waajib**

and you *(Ahnaaf)* **have added the clause** *(to what is Mutlaq in the Quraan)* **of the portion equal to the forehead** *(quarter head)* **from Khabar Wahid** *(Hadeeth)*. *(Secondly if one were to say that)* **The Quraan is Mutlaq with regards to Nikaah reversing the prohibition caused by Talaaq Mughalazah** *(that the contract of Nikaah is sufficient to remove the prohibition of remarriage caused by the issuing of three Talaaq)* **but you** *(Ahnaaf)* **have added the clause of intercourse** *(with the second husband as incumbent to remove the prohibition caused by the three Talaaq to what is Mutlaq in the Quraan)* **from the Hadeeth of the wife of Rifaa'ah.**

قُلْنَا اِنَّ الْكِتَابَ لَيْسَ بِمُطْلَقٍ فِىْ بَابِ الْمَسْحِ فَاِنَّ حُكْمَ الْمُطْلَقِ أَنْ يَكُوْنَ الاتِىْ بِاَىِّ فَرْدٍكَانَ اٰتِياً بِالْمَأْمُوْرِبِهِ وَالاتِىْ بِأَىِّ بَعْضٍ كَانَ هٰهُنَا لَيْسَ بِاٰتٍ بِالْمَأْمُوْرِبِهِ فَاِنَّهُ لَوْمَسَحَ عَلٰى النِّصْفِ أَوْ عَلٰى الثُّلُثَيْنِ لاَ يَكُوْنُ الْكُلُّ فَرْضاً وَبِهِ فَارَقَ الْمُطْلَقُ الْمُجْمَلَ

We would say *(in reply to the first objection)* **that the Quraan is not Mutlaq with regards to Masah** *(of the head)* **because the ruling of Mutlaq is that if the act** *(in this case Masah)* **is carried out on any part** *(portion)* **then one will be fulfilling what one has been ordered to** *(meaning that whatever portion is made Masah of will be regarded as Fardh)***and in this case carrying it out on any part will not be regarded as fulfilling what one has been ordered to** *(as all of it will not be regarded as Fardh)* **because if one were to make Masah on half or two thirds** *(of the head)* **then all of it will not be regarded as Fardh** *(as according to both Imaam Shaafie and Imaam Abu Hanifah a portion will be regarded as Fardh and a portion as Sunnah, which would negate the verse being Mutlaq)* **and this is what differentiates between Mutlaq and Mujmal** *(unclear, and in need of explanation such as the portion which is Fardh to make Masah of in this verse)***.**

وَ اَمَّا قَيْدُ الدُّخُوْلِ فَقَدْ قَالَ الْبَعْضُ اِنَّ النِّكَاحَ فِى النَّصِّ حُمِلَ عَلَى الْوَطْئِ اِذِ الْعَقْدُ مُسْتَفَادٌ مِنْ لَفْظِ الزَّوْجِ وَبِهٰذَا يَزُوْلُ السُّوَالُ وَقَالَ الْبَعْضُ قَيْدُ الدُّخُوْلِ ثَبَتَ بِالْخَبَرِوَ جَعَلُوْهُ مِنَ الْمَشَاهِيْرِفَلاَ يَلْزَمُهُمْ تَقْيِيْدُ الْكِتَابِ بِخَبَرِالْوَاحِدِ ۔

*(And in reply to the second objection we would say)***As far as the clause of intercourse is concerned; some have said** *(replied)* **that** *(the word)* **marries mentioned in the verse** *("She is not lawful for him thereafter until she marries another husband." -Surah Baqarah:* 230)**refers to intercourse because the contract of Nikaah is already implied by the word "husband"** *(as he can only be her husband if the contract of Nikaah was performed and saying that "marries" also refers to the contract of Nikaah will either make its usage for repetition or for emphasis and it is an accepted principle that taking another meaning in such a case is better than accepting it to be for repetition or for emphasis)* **and with this** *(explanation)* **the objection is unfounded. Some** *(Hanafi scholars)* **have said that the clause of intercourse has been proven from Khabar, which the Muhadditheen have categorised as Mashoor** *(a Hadeeth where in any generation, no less than three people narrate a Hadeeth)* **which means that Ahnaaf have not added a clause to the Quraan from Khabar Wahid** *(but from Hadeeth- Mashoor with which it is permissible to do so)***.**

Lesson on Mushtarak and Mu'awwal

فصل فى المشترك و المؤول اَلْمُشْتَرَكُ مَا وُضِعَ لِمَعْنَيَيْنِ مُخْتَلِفَيْنِ أَوْ لِمَعَانٍ مُخْتَلِفَةٍ الْحَقَائِقِ مِثَالُهٗ قَوْلُنَا جَارِيَةٌ فَاِنَّهَا تَتَنَاوَلُ الأَمَةَ وَالسَّفِيْنَةَ وَالْمُشْتَرِىُ فَاِنَّهٗ يَتَنَاوَلُ قَابِلَ عَقْدِ الْبَيْعِ وَكَوْكَبَ السَّمَآءِ وَقَوْلُنَا بَائِنٌ فَاِنَّهٗ يَحْتَمِلُ الْبَيْنَ وَالْبَيَانَ

Mushtarak is a word that has two different meanings or many meanings with each referring to different objects. An example *(example one)* **of this is the word 'جارية'- Jaariyah which refers to a female slave as well as a ship** *(which are entirely different from each other)* **or** *(example two is)* **the word 'مُشْتَرِىْ'- Mushtaree which refers to the buyer** *(in a sale)* **as well as a star in the sky or** *(example three is)* **the word 'بَائِنُ'- Baa'in which means separation as well as explanation.**

The ruling of Mushtarak

وَحُكْمُ الْمُشْتَرَكِ اَنَّهٗ اِذَا تَعَيَّنَ الْوَاحِدُ مُرَاداً بِهٖ سَقَطَ اِعْتِبَارُ اِرَادَةِ غَيْرِهٖ لِهٰذَا اَجْمَعَ الْعُلَمَاءُ رَحِمَهُمُ اللهُ تَعَالیٰ عَلٰی اَنَّ لَفْظَ الْقُرُوْءِ اَلْمَذكُوْرِ فِی كِتَابِ اللهِ تَعَالیٰ مَحْمُوْلٌ اِمَّا عَلٰی الْحَيْضِ كَمَا هُوَ مَذْهَبُنَا أَوْ عَلَی الطُّهْرِكَمَا هُوَ مَذْهَبُ الشَّافِعِیُّ رَحِمَهُ اللهُ تَعَالٰی

The ruling of Mushtarak is that if one meaning has been specified *(by supporting evidence or proof)* **then consideration of the other meanings falls away** *(and only that one particular meaning can be implied[1])*.**Based upon this** *(principle that once one meaning has been specified then another cannot be considered)***, the Ulama, may ALLAAH's mercy be upon them, are in consensus that the word 'الْقُرُوْءِ'- courses mentioned in the Quraan** *("Divorced women should*

[1] Mushtarak having several meanings implied at the same time is known as 'Umoom Mushtarak' and according to the Hanafi school of thought is not possible and only one meaning can be implied as opposed to Imaam Shaafie who says that both meanings can be implied at the same time.

wait (should abstain from remarrying) for three courses.") **refers to either Haidh, as is our** *(Hanafi)* **viewpoint, or** *(refers to)***purity, as is the view of Imaam Shaafie** *(and both cannot be implied at the same time)***.**

Example One

وَقَالَ مُحَمَّد رَحِمَہُ اللهُ تَعَالىٰ اِذَا اَوْصىٰ لِمَوَالِي بَنِيْ فُلاَنٍ وَلِبَنِيْ فُلاَنٍ مَوَالٍ مِنْ أَعْلٰى وَمِنْ اَسْفَلَ فَمَاتَ بَطَلَتِ الْوَصِيَّةُ فِىْ حَقِّ الْفَرِيْقَيْنِ لِاِسْتِحَالَةِ الْجَمْعِ بَيْنَهُمَا وَعَدْمُ الرُّجْحَانِ -

*(Based upon the principle, if one meaning has been specified then consideration of the other meanings fall away)***Imaam Muhammed said, "If a person makes a Waseeyat** *(bequest)* **for the 'مَوَالِى'- Mawaali** *(plural of Mowla, which is Mushtarak and refers to the one who sets a slave free as well as the slave who was set free)* **of a certain person's children, and the children of that person have a Mowla from above** *(the person who set the children free)* **and a Mowla beneath them** *(slaves whom the children set free)***, and then dies then the Waseeyat** *(bequest)* **will be annulled in favour of both parties** *(neither the slaves who were set free by the children or the person who set the children free will inherit because of this bequest)* **because it is impossible for both to be implied** *(at the same time)* **and neither can be specified** *(over the other)***.**

وَقَالَ أَبُوْحَنِيْفَةَ رَحِمَہُ اللهُ تَعَالٰى اِذَا قَالَ لِزَوْجَتِهِ اَنْتِ عَلَيَّ مِثْلُ أُمِّىْ لاَ يَكُوْنُ مُظَاهِراً لاَنَّ اللَّفْظَ مُشْتَرَكٌ بَيْنَ الْكَرَامَةِ وَالْحُرْمَةِ فَلاَ يَتَرَجَّحُ جِهَةُ الْحُرْمَةِ اِلاَّبِالنِّيَةِ

(Based upon the principle, if one meaning has been specified then consideration of the other meanings fall away) **Imaam Abu Hanifah says that If a person tells his wife, "You are like my mother to me" he will not be a Mathaahir because**

the word *("like")* **is Mushtarak and can imply either respect** *(implying that he respects and honours his wife in the same manner as he does for his mother)* **or Hurmat** *(that his wife is Haraam upon him in the same way that his mother is Haraam for him)* **and the meaning of Hurmat cannot be specified except with intention** *(thus if his intention was for Hurmat then only will this meaning be specified over the other)*.

Example Two

وَعَلٰى هٰذَا قُلْنَا لاَيجِبُ النَّظِيْرُ فِىْ جَزَاءِ الصَّيْدِ لِقَوْلِهٖ تَعَالٰى {فَجَزَاءٌ مِّثْلُ مَا قَتَلَ مِنَ النَّعَمِ} لانَّ الْمِثْلَ مُشْتَرَكٌ بَيْنَ الْمِثْلِ صُوْرَةً وَبَيْنَ الْمِثْلِ مَعْنىً وَ هُوَ الْقِيْمَةُ وَقَدْ أرِيْدَ الْمِثْلُ مِنْ حَيْثُ الْمَعْنٰى بِهٰذَا النَّصِّ فِى قَتْلِ الْحَمَامِ وَالعُصْفُوْرِ وَنَحْوِهِمَا بِالاِ تِّفَاقِ فَلاَ يُرَادُ الْمِثْلُ مِنْ حَيْثُ الصُّوْرَةِ اِذْ لاَ عُمُوْمَ لِلْمُشْتَرَكِ أَصْلاً فَيَسْقُطُ اِعْتِبَارُ الصُّوْرَةِ لاسْتِحَالَةِ الْجَمْعِ

Based upon this *(principle that if one meaning has been specified then consideration of the other meaning falls away)* **we say that** *(slaughtering)* **a similar animal is not Waajib for hunting** *(while in Ihraam)* **because of the verse, "The penalty for the person** *(in Ihraam)* **who intentionally kills any game is a domestic animal similar to the animal** *(which he)* **killed"** *(but rather it will be Waajib on him to give the price of the animal away as Sadaqah)*. **The reason for this** *(giving the price of the animal as Sadaqah and not slaughtering a domestic animal)* **is that the word "المثل"- similar is Mushtarak referring to both 'Mithl Suwarie'** *(similar in size)* **and 'Mithl Ma'aanwi' which is similar in price and 'Mithl Ma'aanwi'** *(similar in price)* **is unanimously intended by this verse in the killing of pigeons, sparrows, etc** *(all Fuqahaa are in agreement that if a pigeon, sparrow, etc is killed then the price of it will be given in Sadaqah)* **so 'Mithl Suwarie'** *(an animal similar in size)* **will not be added to this** *(and said to be Waajib as well in*

addition to giving the price) **because in reality there is no 'Umoom Mushtarak'** *(two different meanings cannot be intended at the same time)* **so consideration of** *(the other meaning which is)* **'Mithl Suwarie' will fall away because it is impossible for both to be implied** *(at the same time)***.**

Definition of Mu'awwal

ثُمَّ اِذَا تَرَجَّحَ بَعْضُ وُجُوْهِ الْمُشْتَرَكِ بِغَالِبِ الرَّأْيِ يَصِيْرُ مُؤَوَّلًا وَحُكْمُ الْمُؤَوَّلِ وُجُوْبُ الْعَمَلِ بِهِ مَعَ اِحْتِمَالِ الْخَطَأِ

Then if one of the implications *(meanings)* **of Mushtarak is given preference** *(over the other meanings)* **based on firm judgement** *(because of proof or evidence that supports that meaning)* **it becomes Mu'awwal[1]. The ruling of Mu'awwal is that it is Waajib to act upon it with the possibility of it being incorrect.**

Example One of Mu'awwal

وَمِثَالُهُ فِى الْحُكْمِيَّاتِ مَا قُلْنَا اِذَا اَطْلَقَ الثَّمَنَ فِى الْبَيْعِ كَانَ عَلٰى غَالِبِ نَقْدِ الْبَلَدِ وَذٰلِكَ بِطَرِيْقِ التَّاوِيْلِ وَلَوْكَانَتِ النُّقُوْدُ مُخْتَلِفَةً فَسَدَ الْبَيْعُ لِمَا ذَكَرْنَا وَحَمْلُ الاقْرَاءِ عَلَى الْحَيْضِ وَحَمْلُ النِّكَاحِ فِى الآيَةِ عَلٰى الْوَطْئِ وَحَمْلُ الْكِنَايَاتِ حَالَ مُذَاكَرَةِ الطَّلاَقِ عَلٰى الطَّلاَقِ مِنْ هٰذَا الْقَبِيْلِ

An example of this *(of Mu'awwal)* **in Ahkaam is what we say, "If the price** *(of an item)* **in a sale is kept Mutlaq** *(in that the currency is not specified)* **then it** *(the currency)* **will be the prevalent currency of that town. This** *(specification of the currency)* **was made through Ta'weel** *(deliberation and deduction, that only the prevalent currency of the town could be implied)***. However if there are several currencies prevalent in that town then the sale will be invalid because**

[1] In essence Mu'awwal is a word having different meanings in which the intended meaning has been specified using proof or evidence that supports that meaning.

of what we have mentioned *(that it is impossible for both to be implied at the same time and neither can be specified over the other)*. **Specifying the meaning of "قروء"- courses to be Haidh, "marries" in the verse** *("She is not lawful for him thereafter until she* *<u>marries</u>* *another husband." -Surah Baqarah:* 230)*)* **to be intercourse and insinuations** *(hints)* **during the discussion of Talaaq on** *(to mean)* **Talaaq** *(thus if during the discussion of Talaaq one hints at it or says something which suggests it will be considered to be Talaaq even if the word Talaaq is not said)* **are of this variety** *(where one of the meanings were given reference over the other using Ta'weel)***.**

<u>Example Two</u>

وَعَلٰى هٰذَا قُلْنَا اَلدَّيْنُ الْمَانِعُ مِنَ الزَّكٰوةِ يُصْرَفُ اِلٰى اَيْسَرِ الْمَالَيْنِ قَضَاءً لِلدَّيْنِ وَفرَّعَ مُحَمَّد عَلٰى هٰذَا فَقَالَ اِذَا تَزَّوَجَ اِمْرَأَةً عَلٰى نِصَابٍ وَلَهٗ نِصَابٌ مِنَ الْغَنَمِ وَنِصَابٌ مِنَ الدَّرَاهِمِ يُصْرَفُ الدَّيْنُ اِلَى الدَّرَاهِمِ حَتّٰى لَوْحَالَ عَلَيْهِمَا الْحَوْلُ يَجِبُ الزَّكوَةُ عِنْدَهٗ فِى نِصَابِ الْغَنَمِ وَلاَ تَجِبُ فِى الدَّرَاهِمِ

Based upon this*(principle that when a word has many meanings then one meaning will be given reference using proof or supporting evidence)* **we say, "The Debt** *(one owes to another)* **which prevents Zakaat** *(from becoming Waajib)* **will be conferred to that wealth which is easiest of the two to pay the debt** *(for example, if Zaid has a debt and possesses Dirhams equal to the Nisaab of Zakaat as well as forty sheep on which Zakaat is also Waajib, the debt will be conferred to the dirhams because it is the easiest of the two (between dirhams and sheep) with which to pay the debt. Thus after a year passes the debt will be subtracted from the amount of dirhams he possesses and Zakaat will not be Waajib on the Dirhams but will still remain Waajib on the Sheep)***.**

Imaam Muhammed has derived from this *(the ruling above that the debt will be conferred to that which is easiest of the two to pay the debt)* **that if a man marries a woman on the Nisaab** *(of Zakaat that he will give the Nisaab to her as Mehr)* **and he has the Nisaab of sheep and the Nisaab of Dirhams then the debt** *(of Mehr)* **will be conferred to the dirhams such that after a year passes Zakaat will be Waajib on the sheep he possesses but not on the Dirhams** *(as the debt (Mehr) he owes to his wife has been conferred to it)***.**

Definition of Mufassar

وَلَوْ تَرَجَّحَ بَعْضُ وُجُوْهِ الْمُشْتَرَكِ بِبَيَانٍ مِنْ قِبَلِ الْمُتَكَلِّمِ كَانَ مُفَسَّراً وَحُكْمُهُ اَنَّهُ يَجِبُ الْعَمَلُ بِهِ يَقِيْناً

If the meaning of Mushtarak has been clarified by the speaker then it is known as Mufassar. The ruling of Mufassar is that it is Waajib to act upon it without a doubt.

Example of Mufassar

مِثَالُهُ اِذَا قَالَ لِفُلاَنٍ عَلَيَّ عَشَرَةُ دَرَاهِمَ مِنْ نَقْدِ بُخَارَا فَقَوْلُهُ مِنْ نَقْدِ بُخَارَا تَفْسِيْرٌ لَهُ فَلَوْلاَ ذٰلِكَ لَكَانَ مُنْصَرِفًا اِلٰى غَالِبِ نَقْدِ الْبَلَدِ بِطَرِيْقِ التَّأْوِيْلِ فَيَتَرَجَّحُ الْمُفَسَّرُ فَلاَ يَجِبُ نَقْدُ الْبَلَدِ

An example of Mufassar is if one says, "I owe a certain person ten Dirhams from the currency of Bukhaara." His statement, "from the currency of Bukhaara" is the clarification of it *(the currency)***. Were it not for his clarification then the prevalent currency of the town would have been specified through Ta'weel** *(deliberation and deduction, making it Mu'awwal')***. However Mufassar will be given preference** *(over Mu'awwal)* **and the prevalent currency of the town will not be Waajib** *(but rather the*

*currency of Bukhaara will be Waajib as this has been clarified by the speaker)***.**

Lesson on Haqeeqat and Majaaz

فصل فی الحقیقة و المجاز

كُلُّ لَفْظٍ وَضَعَهُ وَاضِعُ اللُّغَةِ بِإِزَاءِ شَيْءٍ فَهُوَ حَقِيْقَةٌ لَهُ وَلَوِ اسْتُعْمِلَ فِيْ غَيْرِهِ يَكُوْنُ مَجَازًا لَا حَقِيْقَةً

Every word which the grammarian has created for a certain thing *(which implies or refers to certain thing literally)* **is called Haqeeqat and if it used for another** *(it is not used for its original meaning)* **then it is Majaaz and not Haqeeqat.**

The ruling of Haqeeqat and Majaaz

ثُمَّ الْحَقِيْقَةُ مَعَ الْمَجَازِ لاَ يَجْتَمِعَانِ اِرَادَةً مِنْ لَفْظٍ وَاحِدٍ فِيْ حَالَةٍ وَاحِدَةٍ

Then both Haqeeqat and Majaaz cannot be intended at the same time by the same word *(the literal and figurative meaning cannot be implied by the same word at the same time)***.**

<u>Example One</u>

وَلَهٰذَا قُلْنَا لَمَّا أُرِيْدَ مَا يَدْخُلُ فِى الصَّاعِ بِقَوْلِهِ عَلَيْهِ السَّلاَمُ لاَ تَبِيْعُو الدِّرْهَمَ بِالدِّرْهَمَيْنِ وَلاَ الصَّاعَ بِالصَّاعَيْنِ سَقَطَ اِعْتِبَارُ نَفْسِ الصَّاعِ حَتّٰى جَازَ بَيْعُ الْوَاحِدِ مِنْهُ بِالاثْنَيْنِ

Based upon this *(that Haqeeqat and Majaaz cannot be implied at the same time)* **we say when that which is contained in the Saa'a** *(utensil used for measuring)* **is implied by the Hadeeth of Rasulullaah ﷺ, "Do not sell one Dirham in for** *(in exchange for)***two Dirhams nor** *(should you sell)* **one Saa'a** *(what is contained in one Saa'a)* **for two** *(what is*

contained in two Saa'a)" **then the Saa'a** *(measuring utensil which is the literal meaning)* **itself will not be intended** *(as Majaaz is implied here of what is contained in the Saa'a)* **such that it will be permissible to sell one Saa'a** *(measuring utensil)* **for two** *(measuring utensils)***.**

وَلَمَّا اُرِيْدَ الْوِقَاعُ مِنْ اٰيَةِ الْمُلاَمَسَةِ سَقَطَ اِعْتِبَارُ اِرَادَةِ الْمَسِّ بِالْيَدِ

(In a similar manner) **When sexual relations** *(which is the Majaaz)* **is implied by the** *(word "touching" in the)* **verse of Malaamasah** *(the verse is, "If you are ill, on a journey, returning from the toilet or from touching (engaging in sexual relations with) your wives and you do not find water." Surah Maa'idah: 6)* **then touching with the hand** *(which is Haqeeqat)* **will not be intended** *(as the meaning of both Haqeeqat and Majaaz cannot be implied at the same time)***.**

Other examples based on this principle

قَالَ مُحَمَّدٌ اِذَا أَوْصٰى لِمَوَالِيْهِ وَلَهٗ مَوَالٍ اَعْتَقَهُمْ وَلِمَوَالِيْهِ مَوَالٍ اَعْتَقُوْهُمْ كَانَتِ الْوَصِيَّةُ لِمَوَالِيْهِ دُوْنَ مَوَالِيْ مَوَالِيْهِ

Imaam Muhammed says that if a person makes a bequest for his Mawaali *(freed slaves)* **and he has Mawaali** *(slaves)* **whom he has freed and his Mawaali** *(freed slaves)* **have other slaves whom they have set free***(which is Majaaz)* **then the bequest will be for his Mawaali only** *(as this Haqeeqat)***and not the Mawaali of his Mawaali** *(in other words the bequest will only be for those slaves whom he had set free personally and not for both types of Mawaali as in this case Haqeeqat and Majaaz will be implied at the same time)***.**

وَفِى السِّيَرِ الْكَبِيْرِ لَوِ اسْتَأْمَنَ أَهْلُ الْحَرْبِ عَلٰى اٰبَائِهِمْ لاتَدْخُلُ الأَجْدَادُ فِى الأَمَانِ وَلَوِ اسْتَأْمَنُوْا عَلٰى اُمَّهَاتِهِمْ لاَ يَثْبُتُ الأَمَانُ فِىْ حَقِّ الْجَدَّاتِ

And in 'As-Siyarul Kabeer', *(which is a book written by Imaam Muhammed he writes)* **if the enemy in battle seeks asylum for their fathers then their grandfathers will not be included** *(as Haqeeqat refers to fathers only and Majaaz would imply the grandfathers as well and both cannot be implied at the same time)* **and if they seek asylum for their mothers then their grandmothers will not be included** *(as Haqeeqat refers to mothers only and Majaaz would imply the grandmothers as well and both cannot be implied at the same time)***.**

وَعَلىٰ هٰذَا قُلْنَا اِذَا اَوْصىٰ لابْكَارِ بَنِيْ فُلاَنٍ لاَ تَدْخُلُ الْمُصَابَةُ بِالْفُجُوْرِ فِيْ حُكْمِ الْوَصِيَّةِ وَلَوْ اَوْصىٰ لِبَنِى فُلاَنٍ وَلَهٗ بَنُوْنٌ وَبَنُوْ بَنِيْهِ كَانَتِ الْوَصِيَّةُ لِبَنِيْهِ دُوْنَ بَنِيْ بَنِيْهِ

Based on this *(principle that Haqeeqat and Majaaz cannot be implied at the same time)* **we say that if a person makes a bequest for the Baakirah** *(virgin)* **girls of a certain tribe then those who have committed Zinaa will not be included** *(The Haqeeqat of Baakirah refers to that girl who is still a virgin and Majaaz refers to that girl who is unmarried even if she committed Zinaa. If those girls who committed Zinaa are included in this bequest also then Haqeeqat and Majaaz will be implied at the same time which is impermissible)***.** *(In the same manner)* **If a person makes a bequest for the children of a certain person and he has both children and grandchildren then the bequest will be for his children only and not his grandchildren** *(because Haqeeqat refers to his children and Majaaz to the grandchildren and both cannot be implied at the same time)***.**

قَالَ اَصْحَابُنَا لَوْ حَلَفَ لاَ يَنْكِحُ فُلاَنَةً وَهِيَ اَجْنَبِيَّةٌ كَانَ ذٰلِكَ عَلَى الْعَقْدِ حَتّٰى لَوْ زَنىٰ بِهَا لاَ يَحْنَثُ

Our scholars *(of the Hanafi Madhab)* **say if a person takes an oath that he will not make Nikaah with a certain woman and she is unmarried then this will refer to marriage** *(which is Majaaz and his oath would literally mean that he would not marry that woman)* **such that if he commits Zinaa with her** *(indulges in sexual relations with her, which is the Haqeeqat of Nikaah, without marrying her)* **he will not break his oath** *(as both Haqeeqat and Majaaz cannot be implied at the same time)*.

Objection to this rule

وَلِئِنْ قَالَ اِذَا حَلَفَ لاَ يَضَعُ قَدَمَهٗ فِیْ دَارِ فُلاَنٍ يَحْنَثُ لَوْ دَخَلَهَا حَافِياً أَوْ مُتَنَعِّلاً اَوْرَاكِباً

If someone were to say *(in objection to the rule that Haqeeqat and Majaaz cannot be implied at the same time)* **that if a person takes an oath that he will not set foot into the house of a certain person, he will break his oath whether he enters it barefoot** *(which is Haqeeqat and what is implied by setting foot in the house)*, **wearing shoes or riding a horse** *(or any other conveyance, which is Majaaz for setting foot in the house)*. *(In other words Haqeeqat and Majaaz are implied at the same time as we say that he has broken his oath whether he enters the house barefoot or any other way.)*

وَكَذٰلِكَ لَوْ حَلَفَ لاَ يَسْكُنُ دَارَ فُلاَنٍ يَحْنَثُ لَوْكَانَتِ الدَّارُ مِلْكاً لِفُلاَنٍ اَوْكَانَتْ بِاُجْرةٍ أَوْ عَارِيَةٍ وَذٰلِكَ جَمْعٌ بَيْنَ الْحَقِيْقَةِ وَالْمَجَازِ

*(The second objection)***In a similar manner** *(Haqeeqat and Majaaz are implied at the same time)* **if a person takes an oath that he will not stay in a certain person's house, he will break his oath** *(if he stays in that house)* **whether the house really belongs to the other** *(which is Haqeeqat)* **or he is**

renting it or borrowed it *(which is Majaaz)* **even though this would mean that Haqeeqat and Majaaz are implied at the same time.**

وَكَذٰلِكَ لَوْ قَالَ عَبْدُهٗ حُرٌّيَوْمَ يَقْدَمُ فُلاَنٌ فَقَدِمَ فُلاَنٌ لَيْلاً أَوْنَهَارًا يَحْنَثُ

(The third objection) **In a similar manner** *(Haqeeqat and Majaaz will be implied at the same time)* **if a person says that his slave is free the day a certain person arrives then his slave will be set free whether that person comes in the day** *(Haqeeqat)* **or night** *(Majaaz)***.**

قُلْنَا وَضْعُ الْقَدَمِ صَارَمَجَازاً عَنِ الدُّخُوْلِ بِحُكْمِ الْعُرْفِ وَالدُّخُوْلُ لا يَتَفَاوَتُ فِىْ الْفَصْلَيْنِ

We say *(in reply to this objection)* **that setting foot refers to the Majaaz meaning which has been determined by common usage to be entry** *(therefore the oath would mean; if I enter the house of a certain person)* **and entry is not absent in both instances** *(one will be entering the house whether it be barefoot or in any other manner)***.**

وَدَارُ فُلاَنٍ صَارَ مَجَازاً عَنْ دَارٍ مَسْكُوْنَةٍ لَهٗ وَذٰلِكَ لاَ يَتَفَاوَتُ بَيْنَ أَنْ يَّكُوْنَ مِلْكاً لَهٗ أَوْكَانَتْ بِأُجْرَةٍ لَهٗ

(In reply to the second objection we say that) **The house of a certain person is Majaaz for the house in which he lives and does not change whether he owns the house ort is renting it** *(and in both cases will be the house he is living in and thus entry into it will breaks one's oath)***.**

وَالْيَوْمُ فِىْ مَسْئَلَةِ الْقُدُوْمِ عِبَارَةٌ عَنْ مُطْلَقِ الْوَقْتِ لانَّ الْيَوْمَ اِذَا اُضِيْفَ اِلٰى فِعْلٍ لاَ يُمْتَدُّ يَكُوْنُ عِبَارَةٌ عَنْ مُطْلَقِ الْوَقْتِ كَمَا عُرِفَ فَكَانَ الْحِنْثُ بِهٰذَالطَّرِيْقِ لاَ بِطَرِيْقِ الْجَمْعِ بَيْنَ الْحَقِيْقَةِ وَالْمَجَازِ

(In reply to the third objection we say that) **Day in the matter of 'Qudoom'** *(arrival)* **refers to any time because if the word 'Youm'- Day is attached to a 'Ghair Mumtad' verb** *(such a verb which cannot be restricted to a specific time but may be prolonged or can continue for a lengthy period)* **then time is implied** *(and the sentence would mean the time that a certain person arrives)* **as is well known** *(in the laws of grammar)***. Thus the oath will be broken in this manner** *(by usage of Umoom Majaaz[1])* **and not by implying Haqeeqat and Majaaz at the same time.**

Three types of Haqeeqat

ثُمَّ الْحَقِيْقَةُ اَنْوَاعٌ ثَلٰثَةٌ مُتَعَذِّرَةٌ وَ مَهْجُوْرَةٌ وَمُسْتَعْمَلَةٌ وَفِى الْقِسْمَيْنِ الأَوَّلَيْنِ يُصَارُ اِلَى الْمَجَازِ بِالاتِّفَاقِ

Haqeeqat is of three types; Mut'adhirah *(Haqeeqat or literal meaning which is difficult or almost impossible to achieve)***, Mahjoorah** *(Haqeeqat or literal meaning which 'Urf' [i.e. society or common usage] has discarded and does not consider)***, Must'amilah** *(Haqeeqat or literal meaning which is recognised and commonly used in society, in other words is neither Haqeeqat-Mut'adhirah nor Haqeeqat-Mahjoorah)***. In the first two cases** *(Mut'adhirah and Mahjoorah)* **all** *(i.e. Imaam Abu Hanifah, Imaam Abu Yusuf and Imaam Muhammed)* **are in agreement that Majaaz will be considered** *(over Haqeeqat)***.**

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[1] 'Umoom Majaaz' is when a single broad and inclusive meaning is taken which incorporates both the literal and figurative meaning.

Example of Haqeeqat-Mut'adhirah

وَنَظِيْرُ الْمُتَعَذِّرَةِ اِذَا حَلَفَ لاَيَأْكُلُ مِنْ هٰذِهِ الشَّجَرَةِ أَوْ مِنْ هٰذِهِ الْقِدْرِ فَاِنَّ اَكَلَ الشَّجَرَةِ اَوِالْقِدْرِ مُتَعَذِّرَةٌ فَيَنْصَرِفُ ذٰلِكَ اِلىٰ ثَمْرَةِ الشَّجَرَةِ وَاِلىٰ مَا يَحُلُّ فِى الْقِدْرِ حَتّٰى لَوْ اَكَلَ مِنْ عَيْنِ الشَّجَرَةِ أَوْمِنْ عَيْنِ الْقِدْرِ بِنَوْعِ تَكَلُّفٍ لاَ يَحْنَثُ

An example of Mut'adhirah *(Haqeeqat or literal meaning which is difficult or almost impossible to achieve)* **is when a person takes an oath that he will not eat this tree or pot. Since it is impossible** *(or extremely difficult)* **to eat the tree or pot** *(itself)***, it will be taken to mean the fruit of the tree** *(and not the tree itself which is Majaaz)* **or contents of the pot** *(and not the pot itself which is Majaaz)* **such that if a person eats the tree** *(its bark, leaves, or branches, etc)* **or pot** *(or a piece thereof)* **with extreme difficulty he will not be breaking his oath** *(because the meaning of Majaaz has been taken and Haqeeqat and Majaaz cannot be intended at the same time)*

وَعَلىٰ هٰذَا قُلْنَا اِذَا حَلَفَ لاَ يَشْرَبُ مِنْ هٰذِهِ الْبِيْرِ يَنْصَرِفُ ذٰلِكَ اِلَى الاغْتِرَافِ حَتّٰى لَوْ فَرَضْنَا اَنَّهُ لَوْكَرَعَ بِنَوْعٍ تَكَلُّفٍ لاَ يَحْنَثُ بِالاتِّفَاقِ

Based upon this *(principle that in the case of Haqeeqat Mut'adhirah and Haqeeqat Mahjoorah the meaning of Majaaz will be taken)* **we say that if a person takes an oath that he will not drink this well then the meaning will be taken to be draw out water** *(from it and drink which is Majaaz)* **such that if we were to presume that he sipped** *(directly from the well by lowering himself into it)* **with extremely difficulty he will not be breaking his oath** *(as the meaning of Majaaz has been taken and Haqeeqat and Majaaz cannot be intended at the same time)* **according to all** *(Imaam Abu Hanifah, Imaam Abu Yusuf and Imaam Muhammed)***.**

Example of Haqeeqat-Mahjoorah

وَ نَظِيْرُهٗ الْمَهْجُوْرَةُ لَوْحَلَفَ لاَ يَضَعُ قَدَمَهٗ فِىْ دَارِ فُلاَنٍ فَاِنَّ اِرَادَةَ وَضْعِ الْقَدَمِ مَهْجُوْرَةٌ عَادَةً

An Example of Mahjoorah *(Haqeeqat or literal meaning which 'Urf' [i.e. society or common usage] has discarded and does not consider)* **is if a person takes an oath that he will not set foot into a certain person's house as literally placing a single foot is not meant generally** *(which is the Haqeeqat or literal meaning of "setting foot", instead the meaning of Majaaz will be taken here which is to enter the house in any way. Thus if he merely places one foot into the house but does not enter it then he will not break his oath as Haqeeqat and Majaaz cannot be intended at the same time. However if his Niyyat was for only placing a foot then his oath will break[1])***.**

Another example of Haqeeqat-Mahjoorah

وَعَلىٰ هٰذَا قُلْنَا اَلتَّوْكِيْلُ بِنَفْسِ الْخُصُوْمَةِ يَنْصَرِفُ اِلىٰ مُطْلَقِ جَوَابِ الْخَصْمِ حَتّٰى يَسَعَ لِلْوَكِيْلِ أَنْ يُجِيْبَ بِنَعْمْ كَمَا يَسَعَهٗ أَنْ يُّجِيْبَ بِلاَ لاَنَّ التَّوْكِيْلَ بِنَفْسِ الْخُصُوْمَةِ مَهْجُوْرَةٌ شَرْعاً وَعَادَةً

Based upon this *(principle that in the case of Haqeeqat Mut'adhirah and Haqeeqat Mahjoorah the meaning of Majaaz will be taken)* **we say** *(as opposed to Imaam Shaafie)* **that appointing someone as Wakeel** *(representative)* **in a dispute will taken to be permitting him to reply** *(on your behalf)***to the disputant such that the Wakeel** *(representative)* **is permitted to reply in the affirmative just as he is permitted to reply in the negative** *(the summary of this case is that when a person appoints another to be his representative in a*

[1] 'Haashiyah Usool Shaashi'

dispute then he is literally only permitting the other to defend him and if the Wakeel were to affirm the case of the disputant then he would be acting against his appointment as Wakeel to defend him. Since this meaning of Haqeeqat is discarded or not used in Shariaat the meaning of Majaaz will be taken and it will be said that the Wakeel has been given permission to reply, whether it be in the affirmative or negative.)

Ruling of Haqeeqat-Must'amilah

وَلَوْكَانَتِ الْحَقِيْقَةُ مُسْتَعْمَلَةً فَان لَّمْ يَكُنْ لَهَا مَجَازٌ مُتَعَارَفٌ فَالْحَقِيْقَةُ اَوْلىٰ بِلاَ خِلاَفٍ وَاِنْ كَانَ لَهَا مَجَازٌ مُتَعَارَفٌ فَالْحَقِيْقَةُ اَوْلىٰ عِنْدَ اَبِىْ حَنِيْفَةَ وَعِنْدَهُمَا اَلْعَمَلُ بِعُمُوْمِ الْمَجَازِ اَوْلىٰ

If Haqeeqat-Must'amilah does not have a commonly used Majaaz then *(practicing on the)* **Haqeeqat is preferred** *(over practicing on the Majaaz)* **according to all** *(Imaam Abu Hanifah, Imaam Abu Yusuf, Imaam Muhammed)***.** *(However)* **if Haqeeqat Must'amilah has a commonly used Majaaz then according to Imaam Abu Hanifah the Haqeeqat is preferred** *(over Majaaz unless there is evidence that Haqeeqat has not been intended)* **whereas according to Imaam Abu Yusuf and Imaam Muhammed practicing on 'Umoom Majaaz'** *(a single broad and inclusive meaning incorporating both the literal and figurative meaning)* **is preferred.**

Example of Haqeeqat Must'amilah

مِثَالُهٗ لَوْ حَلَفَ لاَ يَأْكُلُ مِنْ هٰذِهِ الْحِنْطَةِ يَنْصَرِفُ ذٰلِكَ اِلىٰ عَيْنِهَا عِنْدَهٗ حَتّٰى لَوْاَكَلَ مِنَ الْخُبْزِ الْحَاصِلِ مِنْهَا لاَ يَحْنَثُ عِنْدَهٗ وَعِنْدَهُمَا يَنْصَرِفُ

اِلٰى مَا تَتَضَمَّنُهُ الْحِنْطَةُ بِطَرِيْقِ عُمُوْمِ الْمَجَازِ فَيَحْنَثُ بِأَكْلِهَا وَبِأَكْلِ الْخُبْزِ الْحَاصِلِ مِنْهَا

An example of this *(where a commonly used Majaaz is present with Haqeeqat-Must'amilah)* **is if a person takes an oath that he will not eat from this wheat then this will be taken to refer to the wheat** *(itself, which is Haqeeqat-Must'amilah)* **according to Imaam Abu Hanifah□ such that if he eats from the bread made from the wheat then he will not be breaking his oath, whereas according to Imaam Abu Yusuf □ and Imaam Muhammed □ it will refer to anything comprising of that wheat using 'Umoom Majaaz' so he will break his oath if he eats the wheat itself or anything made from it.**

<u>Another example of Haqeeqat-Must'amilah</u>

وَكَذَا لَوْحَلَفَ لاَ يَشْرَبُ مِنَ الْفُرَاتِ يَنْصَرِفُ اِلَى الشُّرْبِ مِنْهَا كَرْعاً عِنْدَهٗ وَعِنْدَهُمَا اِلَى الْمَجَازِ الْمُتَعَارَفِ وَهُوَ شُرْبُ مَائِهَا بِأَىِّ طَرِيْقٍ كَانَ

Similarly *(as the above example where a commonly used Majaaz was present with Haqeeqat-Must'amilah)* **if a person takes an oath that he will not drink from the River Euphrates then according to Imaam Abu Hanifah □ it will mean to sip directly from it** *(as this is the literal meaning of it and it is possible)* **whereas according to Imaam Abu Yusuf □ and Imaam Muhammed □the commonly used Majaaz will be considered which is to drink its water in whatever way.**

Difference in opinion regarding the manner in which Majaaz substitutes Haqeeqat

ثُمَّ الْمَجَازُ عِنْدَ اَبِیْ حَنِيْفَةَ خَلْفٌ عَنِ الْحَقِيْقَةِ فِی حَقِّ اللَّفْظِ وَعِنْدَهُمَا خَلْفٌ عَنِ الْحَقِيْقَةِ فِیْ حَقِّ الْحُكْمِ حَتّٰى لَوْ كَانَتِ الْحَقِيْقَةُ مُمْكِنَةً فِیْ نَفْسِهَا اِلاَّ اَنَّهٗ امْتَنَعَ الْعَمَلُ بِهَا لِمَانِعٍ يُصَارُ اِلَى الْمَجَازِ وَاِلاَّصَارَ الْكَلاَمُ لَغْواً وَعِنْدَهٗ يُصَارُ اِلَى الْمَجَازِ وَاِنْ لَّمْ تَكُنِ الْحَقِيْقَةُ مُمْكِنَةً فِیْ نَفْسِهَا

Then Majaaz is regarded as a substitute for Majaaz in speech and according to Imaam Abu Yusuf □ and Imaam Muhammed □ it is a substitute for the ruling such that if the *(meaning of)* **Haqeeqat is possible** *(to apply)* **but cannot be applied due to an impediment** *(difficulty in applying the ruling)* **then** *(only)* **Majaaz will be taken. If** *(the meaning of Haqeeqat is)* **not** *(possible to apply from the beginning)* **then the speech will be meaningless.** *(However)* **According to Imaam Abu Hanifah □ we will take Majaaz even if the** *(meaning of)* **Haqeeqat is not possible in itself.**

مِثَالُهُ اِذَا قَالَ لِعَبْدِهِ وَهُوَ اَكْبَرُ سِنًّا مِنْهُ هٰذَا اِبْنِیْ لاَ يُصَارُ اِلَى الْمَجَازِ عِنْدَهُمَا لاسْتِحَالَةِ الْحَقِيْقَةِ وَعِنْدَهٗ يُصَارُ اِلَى الْمَجَازِ حَتّٰى يُعْتَقَ الْعَبْدُ

An example of this *(difference of opinion between Imaam Abu Hanifah and his two students; Imaam Abu Yusuf and Imaam Muhammed)* **is when a person tells his slave, who is elder than him, "This is my son."** *(In this case)* **Imaam Abu Yusuf □ and Imaam Muhammed □ will not take** *(the meaning of)* **Majaaz because the** *(meaning of)* **Haqeeqat is not possible** *(and in order for something to be a substitute, in this case Majaaz, it is necessary for the primary ruling to be applicable first. Since the ruling is not possible here because the slave is elder then the master, making it impossible for the slave to be the son of the master, the statement will be taken to be meaningless)***. According to Imaam Abu Hanifah □**

Majaaz will be taken *(even though the literal meaning is not possible because Majaaz is a substitute for the speech and not*

the ruling. Thus it is not necessary for the ruling to be applicable first) **such that the slave will be set free** *(because if one becomes master of his own son then his son will be set free automatically, thus the saying of the master, "This is my son." Is the equivalent of saying, "I set you free")***.**

Example

وَعَلیٰ هٰذَا يُخَرَّجُ الْحُكْمُ فِیْ قَوْلِهِ لَهٗ عَلَیَّ اَلْفٌ أَوْ عَلیٰ هٰذَا الْجِدَارَ وَ قَوْلُهٗ عَبْدِیْ أَوْ حِمَارِیْ حُرٌّ

Based upon this *(principle that Imaam Abu Hanifah says Majaaz is a substitute for Haqeeqat in speech and Imaam Abu Yusuf and Imaam Muhammed say it is a substitute for the ruling)* **the rulings are deduced for the saying "I owe or this wall owes a certain person one thousand"** *(Imaam Abu Yusuf and Imaam Muhammed say that since the meaning of Haqeeqat is not possible, as it is impossible for the wall to owe anyone a thousand, Majaaz cannot be taken, thus the sentence will be futile and a thousand will not be incumbent on anyone. Imaam Abu Hanifah on the other hand says that Haqeeqat does not have to be possible for Majaaz to be taken and therefore the meaning of Majaaz is intended here, thus a thousand will be incumbent on anyone of the two who can take responsibility for the debt, which is the speaker in this case)* **and "My slave or my donkey is free"***(Imaam Abu Yusuf and Imaam Muhammed say that since the meaning of Haqeeqat is not possible, as it is impossible for the donkey to be set free, Majaaz cannot be taken, thus the sentence will be futile and neither the donkey nor the slave will be set free. Imaam Abu Hanifah on the other hand says that Haqeeqat does not have to be possible for Majaaz to be taken and therefore the meaning of Majaaz is intended here, thus either one of the two will be set free who is eligible to be set free, which is the slave in this case)***.**

A reply to an objection

وَلاَ يَلْزَمُ عَلىٰ هٰذَا اِذَا قَالَ لاِمْرَأَتِهِ هٰذَا بِنْتِیْ وَلَهَا نَسَبٌ مَعْرُوْفٌ مِنْ غَيْرِهِ حَيْثُ لاَ تَحْرُمُ عَلَيْهِ وَلاَ يُجْعَلُ ذٰلِكَ مَجَازاً عَنِ الطَّلاَقِ سَوَاءٌ كَانَتِ الْمَرْأَةُ صُغْرىٰ سِنًّا أَوْ كُبْرَى لاَنَّ هٰذَا اللَّفْظَ لَوْ صَحَّ مَعْنَاهُ لَكَانَ مُنَافِيًا لِلنِّكَاحِ فَيَكُوْنُ مُنَافِياً لِحُكْمِهِ وَهُوَ الطَّلاَقُ وَلاَ اِسْتِعَارَةَ مَعَ وُجُوْدِ التَّنَافِیْ بِخِلاَفِ قَوْلِهِ هٰذَا اِبْنِیْ فَاِنَّ الْبُنُوَّةَ لاَ تُنَافِیْ ثُبُوْتَ الْمِلْكِ لِلأَبِ بَلْ يَثْبُتُ الْمِلْكُ لَهُ ثُمَّ يُعْتَقُ عَلَيْهِ

(An objection on Imaam Abu Hanifah's principle that Majaaz is a substitute for Haqeeqat in speech and not in ruling is if a person says regarding his wife, "This is my daughter", even though her parentage from another is well-known or she is elder than him, then according to the principle of Imaam Abu Hanifah the meaning of Majaaz should be taken and it will be taken to be Talaaq. The reply to this objection is that) **It does not become necessary as a result of this** *(principle of Imaam Abu Hanifah)* **that when a person tells his wife, "This is my daughter" and her parentage from another is well-known for her to be Haraam upon him** *(the ruling of Thihaar will not apply)* **nor will it be taken to be Majaaz of Talaaq whether she** *(his wife)* **be younger or elder than him. The reason for this is that if the meaning of this word** *(daughter)* **is correct** *(and it is taken literally to mean his blood-daughter)* **then it will oppose** *(the validity of)* **Nikaah** *(as it is impossible for Nikaah to exist between them when she is his daughter)* **and therefore will oppose the ruling of Nikaah** *(when there is no Nikaah then Talaaq cannot be issued)***. Isti'aarah** *(taking an alternate meaning for a word)* **cannot be taken when two things opposing each other** *(which is this case is Nikaah and being his daughter)* **as opposed to the saying** *(to one's slave)***, "This is my son" as being his son does not oppose him being the owner** *(of his son).* **In fact ownership will first be**

established for the father and *(only)* **thereafter** *(will the)* **the son will be set free.**

Lesson of the methods of Isti'aarah

فِی تَعْرِیْفِ طَرِیْقِ الاسْتِعَارَةِ اِعْلَمْ اَنَّ الاسْتِعَارَةَ فِیْ اَحْكَامِ الشَّرْعِ مُطَّرِدَةٌ بِطَرِیْقَیْنِ اَحَدُهُمَا لِوُجُوْدِ الاتِّصَالِ بَیْنَ الْعِلَّةِ وَالْحُكْمِ وَالثَّانِیْ لِوُجُوْدِ الاتِّصَالِ بَیْنَ السَّبَبِ الْمَحْضِ وَالْحُكْمِ فَالأَوَّلُ مِنْهُمَا یُوْجِبُ صِحَّةَ الاسْتِعَارَةِ مِنَ الطَّرَفَیْنِ وَالثَّانِیْ یُوْجِبُ صِحَّتَهَا مِنْ اَحَدِ الطَّرَفَیْنِ وَهُوَ اِسْتِعَارَةُ الأَصْلِ لِلْفَرْعِ

Understand that Isti'aarah *(taking an alternate meaning for a word)* **in the rulings of Shari'ah are possible in two ways. The first is when there is a relationship between the illat** *(principal cause of the Hukam)* **and Hukam** *(ruling)* **and the second is when there is a relationship between the Sabab** *(method of deriving the Hukam)* **and Hukam. The ruling of the first case** *(where there is a relationship between the Illat and Hukam)* **is that Isti'aarah is permissible for both** *(the Illat can be said referring to the Hukam and the Hukam can be said referring to the Illat)* **and the ruling for the second case** *(where there is a relationship between the Sabab and Hukam)* **is that Isti'aarah is permissible for one and that is Isti'aarah of the Asal***(Sabab)* **with the Far'a** *(Hukam, that is one can say the Sabab referring to the Hukam but not the other way.)*

<u>Example of the first type of Isti'aarah</u>

مِثَالُ الأَوَّلِ فِیْمَا اِذَا قَالَ اِنْ مَلَكْتُ عَبْداً فَهُوَحُرٌّ فَمَلَكَ نِصْفَ الْعَبْدِ فَبَاعَه ثُمَّ مَلَكَ النِّصْفَ الاخَرَلَمْ یُعْتَقْ اِذْ لَمْ یَجْتَمِعْ فِیْ مِلْكِه كُلُّ الْعَبْدِ وَلَوْ قَالَ اِنِ اشْتَرَیْتُ عَبْداً فَهُوَ حُرٌّ فَاشْتَرٰی نِصْفَ الْعَبْدِ فَبَاعَه ثُمَّ اشْتَرٰی النِّصْفَ الاخَرَ عُتِقَ النِّصْفُ الثَّانِیْ وَلَوْ عَنٰی بِالْمِلْكِ الشِّرَاءَ وَ

بِالشِّرَاءِ الْمِلْكَ صَحَّتْ نِيَّتُهٗ بِطَرِيْقِ الْمَجَازِ لانَّ الشِّرَاءَ عِلَّةُ الْمِلْك وَالْمِلْكُ حُكْمُهُ فَعَمَّتِ الاسْتِعَارَةُ بَيْنَ الْعِلَّةِ وَالْمَعْلُوْلِ مِنَ الطَّرَفَيْنِ اِلاَّ اَنَّهٗ فِيْمَا يَكُوْنُ تَخْفِيْفًا فِىْ حَقِّهِ لاَ يُصَدَّقُ فِىْ حَقِّ الْقَضَاءِ خَاصَّةً لِمَعْنٰى التُّهْمَةِ لاَ لِعَدْمِ صِحَّةِ الاسْتِعَارَةِ

An example of the first case *(where there is a relationship between the illat and Hukam)* **is when a person says, "If I become owner of a slave then he is free" and then** *(later)* **becomes owner of half a** *(share of a)* **slave which he then sells and then later becomes owner of the other half then** *(in this case)* **the slave will not be set free as he did not become owner of the entire slave** *(at one time, which is the common meaning of ownership)*. *(However)* **If he were to say, "If I purchase a slave then he is free" and then purchases half a** *(a share of)* **slave which he then sells and then** *(later)* **purchases the other half, then the second half will be set free** *(because purchase in common usage does not mean that one has to purchase the entire slave at one time but will be true even purchased in shares. Once he purchases the second half then it will be said that he has purchased the entire slave and the slave will be set free but since the first half was sold and now belongs to another, only the share which he owns will be set free)*. **If***(in these two scenarios of ownership and purchasing)* **ownership is taken to mean purchasing and purchasing to mean ownership then his Niyyat** *(intention)* **will be correct according to the method of Majaaz because purchasing is the Illat** *(principal cause)* **for ownership and ownership is its Hukam** *(ruling which applies on purchasing)***, thus Isti'aarah is permissible for both** *(become owner can mean purchase in the first statement and purchase can mean become owner in the second statement)* **except that the easier scenario** *(of the two)* **for him will not be accepted in court because of 'Tuhmat'** *(suspicion that he may be lying to for his own benefit)* **and not that the method of Isti'aarah is incorrect.**

Example of the second type of Isti'aarah

وَمِثَالُ الثَّانِىْ اِذَا قَالَ لامْرَأَتِهِ حَرَّرْتُكِ وَنَوٰى بِهِ الطَّلاَقَ يَصِحُّ لانّ التَّحْرِيْرَ بِحَقِيقَتِهِ يُوْجِبُ زَوَالَ مِلْكِ الْبُضْعِ بِوَاسِطَةِ زَوَالِ مِلْكِ الرَّقَبَةِ فَكَانَ سَبَباً مَحْضاً لِزَوَالِ مِلْكِ الْمُتْعَةِ فَجَازَ اَنْ يُّسْتَعَارَ عَنِ الطَّلاَقِ الَّذِىْ هُوَمُزِيْلٌ لِمِلْكِ الْمُتْعَةِ

The example of the second type *(of Isti'aarah where there is a relationship between the Sabab an Hukam)* **is when a person says to his wife, "I set you free" with the intention of Talaaq, the Talaaq will apply because** *(the term)* **"setting free" in reality absolve ones right to sexual relations by means of one absolving his ownership thus "setting free" is the Sabab** *(method of deriving the Hukam)* **for absolving oneself from the right to sexual relations. Thus it is permissible to take it** *(the term, "setting free")* **to mean Talaaq which** *(also)* **absolves oneself from the right to sexual relations** *(in other words one can say the Sabab and refer to the Hukam)***.**

وَلاَ يُقَالُ لَوْ جُعِلَ مَجَازاً عَنِ الطَّلاَقِ لَوَجَبَ أَنْ يَّكُوْنَ الطَّلاَقُ الْوَاقِعُ بِهِ رَجْعِياً كَصَرِيْحِ الطَّلاَقِ لأَنَّا نَقُوْلُ لاَ نَجْعَلُهُ مَجَازاً عَنِ الطَّلاَقِ بَلْ عَنِ الْمُزِيْلِ لِمِلْكِ الْمُتْعَةُ وَذٰلِكَ فِىْ الْبَائِنِ اِذِالرَّجْعِىُّ لاَ يُزِيْلُ مِلْكَ الْمُتْعَةِ عِنْدَنَا

We will not say *(regarding the ruling above)* **that if it is the Majaaz of Talaaq then a Talaaq Raj'ie***(revocable Talaaq)* **should apply by it** *(the statement, "I set you free")* **in the same manner as a Sareeh** *(clear, unambiguous)***Talaaq because we say that we have not made it the Majaaz of Talaaq but rather** *(it is Majaaz)* **for absolvement from the right to sexual intercourse and this** *(absolving one from sexual intercourse)* **is only possible with** *(Talaaq)* **Baa'in because** *(Talaaq)* **Raj'ie does not disallow one the right to intercourse according to us** *(the Hanafi school of thought)***.**

وَلَوْ قَالَ لامَتِهِ طَلَّقْتُكِ وَنَوٰى بِهِ التَّحْرِيْرَ لاَ يَصِحُّ لانَّ الأصْلَ جَازَ أَنْ يَثْبُتَ بِهِ الْفَرْعُ وَ أمَّا الْفَرْعُ فَلاَيَجُوْزُ أَنْ يَّثْبُتَ بِهِ الأصلُ

(Continuing with the example of the second type of Isti'aarah where the Sabab can refer to the Hukam but the Hukam cannot refer to the Sabab) **If one says to his female slave, "I give you Talaaq", with the intention to set her free then it is incorrect** *(and the slave will not be freed)* **because it is permissible to say the Sabab** *(setting free)* **and apply the Hukam** *(Talaaq)* **but not permissible to** *(to say the Hukam, which is Talaaq, and)* **apply the Sabab** *(setting free)*.

Deduction

وَعَلىٰ هٰذَا نَقُوْلُ يَنْعَقِدُ النِّكَاحُ بِلَفْظِ الْهِبَةِ وَالتَّمْلِيْكِ وَالْبَيْعِ لانَّ الْهِبَةَ بِحَقِيْقَتِهَا تُوْجِبُ مِلْكَ الرَّقَبَةِ وَمِلْكُ الرَّقَبَةِ يُوْجِبُ مِلْكَ الْمُتْعَةِ فِى الاَمَآءِ فَكَانَتِ الْهِبَةُ سَبَباً مَحْضاً لِثُبُوْتِ مِلْكِ الْمُتْعَةِ فَجَازَ أَنْ يُّسْتَعَارَ عَنِ النِّكَاحِ وَكَذٰلِكَ لَفْظُ التَّمْلِيْكِ وَالْبَيْعِ وَلاَ يَنْعَكِسُ حَتّٰى لاَ يَنْعَقِدُ الْبَيْعُ وَالْهِبَةُ بِلَفْظِ النِّكَاحِ

Based upon this *(principle that the Sabab can refer to the Hukam but the Hukam cannot refer to the Sabab)* **we say, Nikaah will be complete with the words of Hibah** *(if the woman says; I gift myself to you, in the presence of two witnesses and the man accepts)*, **Tamleek** *(if the woman says; I give ownership of myself to you, in the presence of two witnesses and the man accepts)*, **and Bay'a** *(if the woman says; I sell myself to you, in the presence of two witnesses and the man accepts)* **because Hibah** *(to gift)* **in reality establishes ownership and ownership establishes the right to sexual intercourse in female slaves, thus Hibah is a Sabab for establishing the right to sexual intercourse and it will therefore be correct for it** *(the words of Hibah, "I gift myself*

to you") **to refer to Nikaah** *(because the words of Hibah establish the right to sexual intercourse just as Nikaah does)***. The same goes for the words of Tamleek** *(I give ownership of myself to you)* **and Bay'a** *(I sell myself to you, because these words after establishing ownership, establish the right to sexual intercourse in female slaves and it will therefore be correct for it to refer to Nikaah as it establishes the same right as Nikaah)***.** *(However)* **the opposite is impermissible such that Hibah and Bay'a will not be complete using the words of Nikaah** *(one cannot gift something to another saying, I marry this to you", in such a case ownership will not be transferred. The same goes for Bay'a, i.e. one cannot sell something to another with the words, "I marry this to you" and the transaction will be invalid.)*

Niyyat is not necessary

ثُمَّ فِىْ كُلِّ مَوْضِعٍ يَكُوْنُ الْمَحَلُّ مُتَعَيِّناً لِنَوْعٍ مِنَ الْمَجَازِ لا يَحْتَاجُ فِيْهِ اِلَى النِّيَةِ

Then in every instance in which *(the meaning of)* **any type of Majaaz can fit, Niyyat is not necessary** *(in every instance where the meaning of Haqeeqat cannot apply the meaning of Majaaz will be taken automatically and will not be dependent on one's Niyyat- intention)*

An objection

ثُمَّ فِىْ كُلِّ مَوْضِعٍ يَكُوْنُ الْمَحَلُّ مُتَعَيِّناً لِنَوْعٍ مِنَ الْمَجَازِ لا يَحْتَاجُ فِيْهِ اِلَى النِّيَةِ لاَ يُقَالُ وَلَمَّا كَانَ اِمْكَانُ الْحَقِيْقَةِ شَرْطاً لِصَحَّةِ الْمَجَازِ عِنْدَهُمَا كَيْفَ يُصَارُ اِلَى الْمَجَازِ فِىْ صُوْرَةِ النِّكَاحِ بِلَفْظِ الْهِبَةِ مَعَ أَنَّ تَمْلِيْكَ الْحُرَّةِ بِالْبَيْعِ وَالْهِبَةِ مَحَالٌ لانَّا نَقُوْلُ ذٰلِكَ السَّمَاءِ وَاَخَوَاتِهِ

(The author now mentions an objection on the standpoint of Imaam Abu Yusuf and Imaam Muhammed regarding Majaaz.) **it will not be said that when practicing on the meaning of Haqeeqat must be possible** *(but difficult due to exterior factors)* **before Majaaz can be taken according to Imaam Abu Yusuf □ and Imaam Muhammed □, so how can the meaning of Nikaah be taken with the words of Hibah when becoming owner of a free woman is impossible through Hibah and Bay'a** *(sale, in other words the since meaning of Haqeeqat is not possible, i.e. one cannot become owner of a free woman through these transactions, so how can the meaning of Majaaz, i.e. Nikaah, be taken by Imaam Abu Yusuf and Imaam Muhammed)* **because we will say** *(in reply to this objection)* **this** *(becoming owner of a free woman through Hibah or sale)* **is possible in one way and that is if she becomes Murtad** *(abandons Islaam)***, flees to the land of the disbelievers and is then caught** *(and brought back to the lands of Islaam as a slave where it is now possible to transfer ownership of her through Hibah or sale)***. This has become an example of touching the sky** *(taking an oath to touch the sky)* **and other similar cases** *(where an oath was taken on a seemingly impossible act, which should render the statement futile because of its impossibility but is still regarded as valid because of it being possible through a miracle)***.**

Lesson on Sareeh and Kinaayah

فصل فِی الصَّرِیْحِ وَ الْکِنَایَةِ

اَلصَّرِیْحُ لَفْظٌ یَکُوْنُ الْمُرَادُ بِهِ ظَاهِراً کَقَوْلِهِ بِعْتُ وَ اِشْتَرَیْتُ وَ اَمْثَالِهِ وَحُکْمُهٗ اَنَّهٗ یُوْجِبُ ثُبُوْتَ مَعْنَاهٗ بِاَیِّ طَرِیْقٍ کَانَ مِنْ اَخْبَارٍ اَوْ نَعْتٍ اَوْ نِدَاءٍ وَمِنْ حُکْمِهِ أَنَّهٗ یَسْتَغْنِیْ عَنِ النِّیَّةِ وَعَلٰی هٰذَا قُلْنَا اِذَا قَالَ لامْرَاَتِهِ اَنْتِ طَالِقٌ اَوْ طَلَّقْتُكِ أَوْ یَاطَالِقٌ یَقَعُ الطَّلَاقُ نَوٰی بِهِ الطَّلَاقَ أَوْ لَمْ یَنْوِ وَکَذَا لَوْ قَالَ لِعَبْدِهِ اَنْتَ حُرٌّ أَوْ حَرَّرْتُكَ أَوْ یَا حُرٌّ

Sareeh is a word the meaning of which is clear *(transparent and unambiguous, with no need for further clarification)* **such as the words 'بِعْتُ'- "I sold" and 'اِشْتَرَيْتُ'- "I bought", etc. The ruling of Sareeh is that its** *(apparent)* **meaning will be established** *(adhered to)* **regardless of the manner it has been mentioned in, whether it be Khabar** *(information)***, sifat** *(adjective)* **or Nidaa** *(title or label)***. Another ruling of Sareeh is that it is not dependent upon Niyyat** *(intention, since its meaning is apparent and clear there will be no need to determine the intention of the speaker before applying the Hukam to his speech)***. Based upon this** *(that Niyyat is not necessary in Sareeh speech)* **we say if a person tells his wife, "You are divorced"** *(an example where a Sareeh word has been used as sifat- adjective)***, "I gave you Talaaq"** *(an example where a Sareeh word was used as Khabar- to give information)* **or** *(addressing his wife, he says,)* **"O Divorced one!"** *(An example where a Sareeh word was used as a title for another)***, the Talaaq will apply whether the person had the intention for Talaaq or not. In a similar manner** *(intention will not be taken into account)* **when one tells his slave, "You are free"** *(example of Sifat)***, "I set you free"** *(example of Khabar)***, or "O free one!"** *(example of Nidaa, and in all three cases the free will be set free whether the speaker had the intention to set the slave free or not)***.**

Deduction

وَ عَلٰى هٰذَا قُلْنَا اِنَّ التَّيَمُّمَ يُفِيْدُ الطَّهَارَةَ لانَّ قَوْلَهٗ تَعَالىٰ {وَلٰكِن يُّرِيْدُ لِيُطَهِّرَكُمْ}صَرِيْحٌ فِىْ حُصُوْلِ الطَّهَارَةِ بِهِ وَلِلشَّافِعِىِّ فِيْهِ قَوْلاَنِ اَحَدُهُمَا اَنَّهٗ طَهَارَةٌ ضَرُوْرِيَّةٌ وَالاخَرُ اَنَّهٗ لَيْسَ بِطَهَارَةٍ بَلْ هُوَ سَاتِرٌ لِلْحَدَثِ

Based upon this *(principle that Sareeh is a word with a clear meaning, which will be established regardless of the manner it was mentioned in)* **we say that Tayammum promotes**

Tahaarat *(is complete purity without restriction)* **because the verse of ALLAAH Ta'ala,**

{وَلٰكِن يُّرِيْدُ لِيُطَهِّرَكُمْ}

"But wants to purify you."*(Surah Maa'idah: 6)*

is Sareeh *(clear and unambiguous)* **in obtaining Tahaarat with it** *(Tayammum)*. **Imaam Shaafie** *(however)* **has two opinions; one is that it is 'Tahaarat-Dharooriyah'** *(Tahaarat only out of necessity and will there for apply as long as the necessity remains)* **and the other is that it is not Tahaarat but 'Saatirul Hadath'** *(conceals impurity for the period during which one performs his ibaadat and after completion no longer does so)***.**

Differences which arise as a result of this

وَعَلىٰ هٰذَا يُخَرَّجُ الْمَسَائِلُ عَلٰى مَذْهَبَيْنِ مِن جَوَازِهِ قَبْلَ الْوَقْتِ وَاَدَاءِ الْفَرِيْضَتَيْنِ بِتَيَمُّمٍ وَاحِدٍ وَ اِمَامَةُ الْمُتَيَمِّمِ لِلْمُتَوَضِّئِيْنَ وَجَوَازُه بِدُوْنِ خَوْفِ تَلْفِ النَّفْسِ أوِ الْعَضْوِ بِالْوُضُوْءِ وَجَوَازُه لِلْعِيْدِ وَ الْجَنَازَةِ وَجَوَازُه بِنِيَّةِ الطَّهَارَةِ

Based upon this *(difference of opinion amongst Imaam Abu Hanifah and Imaam Shaafie, whereby Imaam Abu Hanifah says that Tayammum is unrestricted Tahaarat and Imaam Shaafie says that it is Tahaarat out of necessity)* **extraction of Masaa'il** *(rulings)* **between the two Mathaahib** *(between the Hanafi and Shaafie Madhab)* **differ with regards to performing Tayammum before the time of Salaah sets in** *(Imaam Abu Hanifah says that it is permissible to perform*

Salaah with that Tayammum because it is complete Tahaarat without restriction whereas the Imaam Shaafie says that it is impermissible to perform Tayammum with that Tayammum as it is a Tahaarat out of necessity and there is no necessity before the time of Salaah sets in),**to perform two Fardh Salaah with the same Tayammum** *(Imaam Abu Hanifah says that it is permissible to perform two Fardh Salaah with the same Tayammum because it is complete Tahaarat without restriction, whereas Imaam Shaafie says it is impermissible to perform two Fardh Salaah with the same Tayammum as it is Tahaarat out of necessity and the necessity ended after the performance of the first Fardh Salaah)*, **the Imaamat of one who performed Tayammum over those who performed Wudhu** *(Imaam Abu Hanifah says it is permissible as Tayammum is complete Tahaarat without restriction, whereas Imaam Shaafie says it is impermissible because it is Tahaarat out of necessity as opposed to Wudhu which is real Tahaarat. Thus the condition of the Musallees is above that of the Imaam, which makes it impermissible for him to make Imaamat over them)*, **performing Tayammum when one does not have fear for his life or** *(of losing)* **a limb** *(Imaam Abu Hanifah says that Tayammum is permissible even if one only fears that his illness will increase, whereas Imaam Shaafie says it is only permissible if he has fear for his life or of losing a limb as then only will there be a necessity and Tayammum is only Tahaarat out of necessity)*, **permissibility of Tayammum for Eid salaah and Janaazah Salaah***(Imaam Abu Hanifah says that it is permissible to make Tayammum for these Salaah if one fears that he will miss the Salaah if he proceeds to perform Wudhu as there is no Qadhaa for these two Salaah, whereas Imaam Shaafie says one cannot perform Tayammum for these two Salaah but one should perform Wudhu then he should make Qadhaa)*, **as well as its permissibility with the intention of Tahaarat***(since Imaam Abu Hanifah regards Tayammum as a complete Tahaarat without restriction, he says it is permissible*

*to perform Tayammum with the intention of obtaining Tahaarat. Imaam Shaafie on the other hand, according to one opinion states that Tayammum is not Tahaarat at all and according to his other opinion is Tahaarat out of necessity, thus according to him Tayammum will not be valid with the intention of Tahaarat but instead one must make the intention that he is performing Tayammum to read Salaah)***.**

Definition and ruling of Kinaayah

وَالْكِنَايَةُ هِيَ مَا اسْتَتَرَ مَعْنَاهُ وَالْمَجَازُ قَبْلَ أَنْ يَّصِيْرَ مُتَعَارِفاً بِمَنْزِلَةِ الْكِنَايَةِ وَحُكْمُ الْكِنَايَةِ ثُبُوْتُ الْحُكْمِ بِهَا عِنْدَ وُجُوْدِ النِّيَةِ أَوْ بِدَلاَلَةِ الْحَالِ اِذْا لاَ بُدَّ لَهٗ مِنْ دَلِيْلٍ يَزُوْلُ بِهِ التَّرَدُّدُ وَيَتَرَجَّحُ بِهِ بَعْضُ الْوُجُوْهِ وَلِهٰذَا الْمَعْنٰى سُمِّىَ لَفْظُ الْبَيْنُوْنَةِ وَالتَّحْرِيْمِ كِنَايَةً فِىْ بَابِ الطَّلاَقِ لِمَعْنٰى التَّرَدُّدِ وَاسْتِتَارِ الْمُرَادِ لاَ اَنَّهٗ يَعْمَلُ عَمَلَ الطَّلاَقِ وَ يَتَفَرَّعُ مِنْهُ حُكْمُ الْكِنَايَاتِ فِىْ حَقِّ عَدْمِ وِلاَيَةِ الرَّجْعَةِ

Kinaayah is a word whose meaning is obscure and Majaaz, before it *(its intended meaning)* **becomes known is the same as Kinaayah** *(as either the literal meaning or figurative meaning can be implied)***. The ruling of Kinaayah is that the apparent meaning will be applied when the** *(speaker's)* **intention** (objective) **was for it or** *(the intention is made clear)* **by the occasion** *(condition or context in which the statement was said)***. The reason for this** *(the need for the intention of the speaker to be known or the meaning determined by the occasion or context in which it was said)* **is that it is necessary for** *(such)* **proof to exist which will remove any doubt** *(with regards to its intended meaning)* **and one meaning be given preference** *(over another)***. As a result of this** *(that the meaning of Kinaayah is obscure)* **the words of 'Baynoonah'***(by saying, "You are separated from me")* **and 'Tahreem'** *(by saying, "You are forbidden to me")* **are classified as Kinaayah in the chapter of Talaaq because of**

doubt *(in its intended meaning)* **and because its purport** *(meaning)* **is hidden, and** *(it is)* **not** *(classified as Kinaayah because)* **that they serve the same purpose as** *(the words of)* **Talaaq***(thus concluding that a Talaaq Raj'ie will apply as is the opinion of Imaam Shaafie)***.**

Punishments are not established by Kinaayah

وَلِوُجُوْدِ مَعْنَى التَّرَدُّدِ فِى الْكِنَايَةِ لاَ يُقَامُ بِهَا الْعُقُوْبَاتُ حَتّٰى لَوْ اَقَرَّ عَلٰى نَفْسِهِ فِىْ بَابِ الزِّنَا وَالسَّرِقَةِ لاَ يُقَامُ عَلَيْهِ الْحَدُّ مَالَمْ يُذْكَرِ اللَّفْظُ الصَّرِيْحُ وَلِهٰذَا الْمَعْنٰى لاَ يُقَامُ الْحَدُّ عَلَى الأَخْرَسِ بِالاشَارَةِ وَلَوْ قَذَفَ رَجُلاً بِالزِّنَا فَقَالَ الاخَرُ صَدَقْتَ لاَ يَجِبُ الْحَدُّ عَلَيْهِ لاحْتِمَالِ التَّصْدِيْقِ لَهٗ فِىْ غَيْرِهِ

Based upon this *(principle that words of Kinaayah are obscure and unclear)* **punishments** *(Shar'ie punishments and sentences)* **will not be executed by it** *(by Kinaayah)* **such that if one admits to committing Zinaa** *(fornication)* **or stealing the** *(Shar'ie)* **punishment will not be executed until he uses** *(admits it using)* **Sareeh** *(clear and unambiguous words)***. As a result of this** *(that Shar'ie punishments are not executed by testimonies in Kinaayah)* **the** *(Shar'ie)* **punishment will not carried out on a dumb person** *(if he confesses to a crime using sign language)***.** *(In the same manner)* **If a person falsely accuses another of Zinaa** *(fornication)* **and another says** *(in corroboration with the accuser)***, "You have spoken the truth" then the punishment** *(of false accusation)* **will not be executed on him** *(the corroborated who said, "You have spoken the truth")* **because there is a possibility that he may be affirming something else that the accuser said** *(and not corroborating his false testimony for Zinaa)***.**

Lesson on Mutaqaabalaat[1]

فصل

فِى الْمُتَقَابِلاَتِ نَعْنِىْ بِهَا الظَّاهِرَ وَالنَّصَّ وَالْمُفَسَّرَ وَالْمُحْكَمَ مَعَ يُقَابِلُهَا مِنَ الْخَفِيِّ وَالْمُشْكَلِ وَالْمُجْمَلِ وَالْمُتَشَابِهِ

By Mutaqaabalaat we refer to the terms Thaahir, Nas, Mufassar, and Muhkam and their opposites of Khafie, Mushkil, Mujmal, and Mutashaabih.

فَالظَّاهِرُ اِسْمٌ لِكُلِّ كَلاَمٍ ظَهَرَ الْمُرَادُ بِهِ لِلسَّامِعِ بِنَفْسِ السِّمَاعِ مِنْ غَيْرِ تَأَمُّلٍ

Thaahir is a word, which the listener understands its meaning by merely listening to it, without any reflection or contemplation.

وَالنَّصُّ مَا سِيْقَ الْكَلاَمُ لأَجْلِهِ

Nas is the crux and object of the speech.

Example one of Thaahir and Nas

وَمِثَالُهُ فِىْ قَوْلِهِ تَعَالىٰ {اَحَلَّ اللهُ الْبَيْعَ وَحَرَّمَ الرِّبوٰ} فَالايَةُ سِيْقَتْ لِبَيَانِ التَّفْرِقَةِ بَيْنَ الْبَيْعِ وَالرِّبوٰ رَدًّا لِمَا ادَّعَاهُ الْكُفَّارُ مِنَ التَّسْوِيَةِ بَيْنَهُمَا حَيْثُ قَالُوْا {اِنَّمَا الْبَيْعُ مِثْلُ الرِّبوٰ} وَقَدْ عُلِمَ حِلُّ الْبَيْعِ وَحُرْمَةُ الرِّبوٰا بِنَفْسِ السِّمَاعِ فَصَارَ ذٰلِكَ نَصًّافِى التَّفْرِقَةِ ظَاهِراً فِىْ حِلِّ الْبَيْعِ وَحُرْمَةِ الرِّبوٰا

An example of this *(of Thaahir and Nas)* **is the verse of ALLAAH Ta'ala,**

[1] Mutaqaabalaat refers to those terms which have opposites, such as Thaahir is the opposite of Khafie, Nas is the opposite of Mushkil, Mufassar is the opposite of Mujmal, and Muhkam is the opposite of Mutashaabih.

{اَحَلَّ اللّٰهُ الْبَيْعَ وَحَرَّمَ الرِّبٰو}

"ALLAAH has permitted trade and forbidden interest."
(Surah Baqarah: 275)

The crux or object of this verse is to differentiate between trade and interest, and refute the claim of the Kuffaar of them *(trade and interest)* **being the same when they said,**

{اِنَّمَا الْبَيْعُ مِثْلُ الرِّبٰو}

"Trade is just like interest." *(Surah Baqarah: 275)*

We learn from this *(verse)* **the permissibility of trade and the prohibition of interest by merely listening to this verse** *(without the need for further explanation or clarification)***, thus differentiation between trade and interest** *(which is the object of this sentence)* **will be Nas, and permissibility of trade and prohibition of interest** *(which we understand by merely listening to this verse)* **is Thaahir.**

Example two of Thaahir and Nas

وَكَذٰلِكَ قَوْلُهُ تَعَالٰى{ فَانْكِحُوْا مَا طَابَ لَكُمْ مِّنَ النِّسَآءِ مَثْنٰى وَثُلٰثَ وَ رُبٰعَ}سِيْقَ الْكَلاَمُ لِبَيَانِ الْعَدَدِ وَقَدْ عُلِمَ الاطْلاَقُ وَالاجَازَةُ بِنَفْسِ السِّمَاعِ فَصَارَ ذٰلِكَ ظَاهِراً فِىْ حَقِّ الاطْلاَقِ نَصًّا فِىْ بَيَانِ الْعَدَدِ

Similarly, the verse,

{ فَانْكِحُوْا مَا طَابَ لَكُمْ مِّنَ النِّسَآءِ مَثْنٰى وَثُلٰثَ وَ رُبٰعَ}

"Then marry two, three, or four women with whom you are pleased *(to have as your wives)***."** *(Surah Nisaa: 3)*

Has been mentioned with the purpose *(objective)* **of explaining the number** *(of wives one can be married to at one time, which is four)***. We learn of the permissibility of marriage itself by merely listening to the verse** *(as giving the order to marry would obviously imply that marriage is permissible)***, thus permissibility to marry will be Thaahir and the number** *(of wives one can marry at one time)* **will be Nas.**

Example Three of Thaahir and Nas

وَكَذٰلِكَ قَوْلُهٗ تَعَالىٰ {لاَ جُنَاحَ عَلَيْكُمْ اِنْ طَلَّقْتُمُ النِّسَآءَ مَالَمْ تَمَسُّوْهُنَّ أَوْ تَفْرِضُوْا لَهُنَّ فَرِيْضَةً} نَصٌّ فِىْ حُكْمِ مَن لَّمْ يُسَمِّ لَهَا الْمَهْرُ وَظَاهِرٌ فِىْ اِسْتِبْدَادِ الزَّوْجِ بِالطَّلَاقِ وَاِشَارَةٌ اِلٰى اَنَّ النِّكَاحَ بِدُوْنِ ذِكْرِ الْمَهْرِ يَصِحُّ

Similarly in the verse,

{لاَ جُنَاحَ عَلَيْكُمْ اِنْ طَلَّقْتُمُ النِّسَآءَ مَالَمْ تَمَسُّوْهُنَّ أَوْ تَفْرِضُوْا لَهُنَّ فَرِيْضَةً}

"There is no sin on you if you divorce women while you have not touched them *(not yet met with them in privacy)* **nor fixed a dowry for them."** *(Surah Baqarah: 236)*

explaining the laws with regards to that woman whose Mehr *(dowry)* **has not been mentioned** *(and then divorced before the marriage can be consummated)* **is Nas** *(the object and purpose of the verse)* **and** *(since we learn)* **that men have the right of issuing Talaaq** *(by merely listening to the verse it)* **is** *(will be)* **Thaahir and indicates that Nikaah without mentioning the Mehr is valid.**

Example Three of Thaahir and Nas

وَكَذٰلِكَ قَوْلُه عَلَيْهِ السَّلاَم مَنْ مَّلَكَ ذَارَحْمٍ مَحْرَمٍ مِنْهُ عُتِقَ عَلَيْهِ نَصٌّ فِىْ اِسْتِحْقَاقِ الْعِتْقِ لِلْقَرِيْبِ وَظَاهِرٌ فِىْ ثُبُوْتِ الْمِلْكِ لَه

Similarly in the Hadeeth of Rasulullaah , "Whoever becomes owner of his immediate relative *(son, father, daughter, mother, etc)***,** *(the slave/immediate relative)* **will be set free", freedom for one's blood relative is Nas** *(the objective or purpose of this Hadeeth)* **and establishing ownership is Thaahir** *(we learn by merely listening to the words, "becomes owner", that ownership is first established and thereafter the slave will be set free)***.**

The ruling of Thaahir and Nas

وَحُكْمُ الظَّاهِرِ وَالنَّصِّ وُجُوْبُ الْعَمَلِ بِهِمَا عَامَّيْنِ كَانَا اَوْخَاصَّيْنِ مَعَ اِحْتِمَالِ اِرَادَةِ الْغَيْرِ وَذٰلِكَ بِمَنْزِلَةِ الْمَجَازِ مَعَ الْحَقِيْقَةِ

The ruling of Thaahir and Nas is that it is Waajib to practice on it whether they be Aam or Khaas with the possibility that another *(meaning)* **could be intended. This** *(that another meaning could be intended)* **is the same as** *(that)* **Majaaz with** *(which has the possibility that)* **Haqeeqat** *(could be implied)***.**

وَعَلٰى هٰذَا قُلْنَا اِذَا اشْتَرٰى قَرِيْبَه حَتّٰى عُتِقَ عَلَيْهِ يَكُوْنُ هُوَ مُعْتِقاً وَيَكُوْنُ الْوَلاَءُ لَه

Based upon this *(ruling that it is waajib to act upon Thaahir and Nas)* **we say; if a person purchases his blood relative such that they are set free, he** *(the purchaser)* **will be the Mu'tiq** *(the one who set him free)* **and will also have the right of Walaa'** *(the right to inherit if the deceased has no Dhawil Furoodh or Asabah Nasabi)***.**

Contradiction between Thaahir and Nas

Example One

وَ اِنَّمَا يَظْهَرُ التَّفَاوُتُ بَيْنَهُمَا عِنْدَ الْمُقَابَلَةِ وَلِهٰذَا لَوْ قَالَ لَهَا طَلِّقِىْ نَفْسَكِ فَقَالَتْ اَبَنْتُ نَفْسِىْ يَقَعُ الطَّلاَقُ رَجْعِيًّا لاَنَّ هٰذَا نَصٌّ فِى الطَّلاَقِ ظَاهِرٌ فِى الْبَيْنُوْنَةِ فَيَتَرَجَّحُ الْعَمَلُ بِالنَّصِّ

The difference between Thaahir and Nas becomes clear when they contradict each other *(and in such a case Nas will be given preference over Thaahir)***. Based upon this** *(rule that Nas will be given preference over Thaahir when they apparently contradict each other)* **if a person says to his wife, "Give yourself Talaaq" and she then says, "I separate myself from you"** *(which is Talaaq-Kinaayah and should result in a Talaaq Baa'in- irrevocable Talaaq)* **then a Talaaq Raj'ie** *(revocable Talaaq)* **will fall because issuing of Talaaq is Nas** *(the object and purpose of this speech)* **and Thaahir** *(what we understand by merely listening)* **is Baynoonah** *(separation, i.e. Talaaq-Kinaayah)***, so practicing on Nas will be given preference** *(because Nas is the actual object and purpose of the speech)***.**

Example two

وَكَذٰلِكَ قَوْلُهُ عَلَيْهِ السَّلاَمُ لاهْلِ عُرَيْنَةَ اِشْرَبُوْا مِنْ اَبْوَالِهَا وَاَلْبَانِهَا نَصٌّ فِىْ بَيَانِ سَبَبِ الشِّفَاءِ وَظَاهِرٌ فِىْ اِجَازَةِ شُرْبِ الْبَوْلِ وَقَوْلُهُ عَلَيْهِ السَّلاَم اِسْتَنْزِهُوْا مِنَ الْبَوْلِ فَاِنَّ عَامَّةَ عَذَابِ الْقَبْرِ عَنْهُ نَصٌّ فِىْ وُجُوْبِ الاحْتِرَازِ عَنِ الْبَوْلِ فَيَتَرَجَّحُ النَّصُّ عَلَى الظَّاهِرِ فَلاَ يَحِلُّ شُرْبُ الْبَوْلِ اَصْلاً

Similarly in the Hadeeth of Rasulullaah to the people of Uraynah, "Drink from its *(camel's)* **urine and milk", explaining the cure** *(treatment with urine)* **is Nas** *(the object*

and purpose of this Hadeeth) **and permissibility to drink** *(camel)* **urine is Thaahir** *(what we learn by merely listening to the speech, whereas)* **in another Hadeeth of Rasulullaah , "Safeguard yourself from urine for undoubtedly generally punishment in the grave is a result of it** *(not safeguarding oneself from urine)***", abstaining from urine being Waajib is Nas, so Nas will be given preference over Thaahir and drinking urine will not be permissible at all.**

Example Three

وَقَوْلُهٗ عَلَيْهِ السَّلاَمُ مَا سَقَتْهُ السَّمَآءُ فَفِيْهِ الْعُشْرُ نَصٌّ فِىْ بَيَانِ الْعُشْرِ وَقَوْلُهُ عَلَيْهِ السَّلاَمُ لَيْسَ فِى الْخَضْرَوَاتِ صَدَقَةٌ مُؤَوَّلٌ فِىْ نَفْيِ الْعُشْرِ لانَّ الصَّدَقَةَ تَحْتَمِلُ وُجُوْهاً فَيَتَرَجَّحُ الأَوَّلُ عَلَى الثَّانِىْ

And the Hadeeth of Rasulullaah , "That which has been irrigated by the sky *(rainwater)*, **Ushr** *(one tenth)***is due from it" regarding giving one tenth in charity is Nas***(the object and purpose of this Hadeeth is to state that one tenth of any produce which has been irrigated by the rain must be given as Sadaqah)* **and the Hadeeth, "There is no Sadaqah due on vegetables" is Mu'awwal** *(the word Sadaqah could refer to many things; Zakaat, charity, Ushr, etc and through Ta'weel it has been determined that it refers to Ushr)* **in the exclusion of Ushr***(thus Hadeeth has been said to mean, "There is no Ushr due on vegetables")* **because Sadaqah has many meanings. Thus the first** *(Nas)* **will be given preference over the second** *(Mu'awwal and Ushr will be due on vegetables)***.**

Definition of Mufassar

وَأَمَّا الْمُفَسَّرُ فَهُوَمَا ظَهَرَ الْمُرَادُ بِهِ مِنَ اللَّفْظِ بِبَيَانٍ مِنْ قَبْلِ الْمُتَكَلِّمِ بِحَيْثُ لاَ يَبْقٰى مَعَهٗ اِحْتِمَالُ التَّاوِيْلِ وَالتَّخْصِيْصِ

Mufassar is a word the meaning of which has been clarified by the speaker such that there remains no possibility of Ta'weel *(alternate interpretation)* **or Takhsees** *(exclusion of part of its constituents)***.**

Example of Mufassar

مِثَالُهٗ فِیْ قَوْلِهٖ تَعَالٰی {فَسَجَدَ الْمَلاَئِكَةُ كُلُّهُمْ اَجْمَعُوْنَ}فَاِسْمُ الْمَلاَئِكَةِ ظَاهِرٌ فِی الْعُمُوْمِ اِلاَّ اَنَّ اِحْتِمَالَ التَّخْصِيْصِ قَائِمٌ فَانْسَدَّ بَابُ التَّخْصِيْصِ بِقَوْلِهٖ كُلُّهُمْ ثُمَّ بَقِیَ اِحْتِمَالُ التَّفْرِقَةِ فِی السُّجُوْدِ فَانْسَدَّ بَابُ التَّاوِيْلِ بِقَوْلِهٖ اَجْمَعُوْنَ

An example *(of Mufassar)* **is the verse of ALLAAH Ta'ala,**

{فَسَجَدَ الْمَلاَئِكَةُ كُلُّهُمْ اَجْمَعُوْنَ}

"So *(when ALLAAH issued the command to bow down)* **every single one of the angels bowed down to him together..."**

(Surah Saad: 73)

The word angles is Thaahir in being general *(that all the angles are being referred to)* **but it has the possibility of Takhsees** *(such that some angels may be excluded)* **but the possibility of Takhsees was closed with the words,** "كُلُّهُمْ **- every single one". The possibility of difference in** *(the manner or time they took to make)* **Sajdah still remained and so the Ta'weel** *(interpreting it that they all made Sajdah separately at different times)* **was closed by the words**"اَجْمَعُوْنَ**- together"** *(which indicates that all the angels performed Sajdah together at the same time)***.**

Example of Mufassar in the laws of Shari'ah

Example One

وَفِى الشَّرْعِيَاتِ اِذَا قَالَ تَزَوَّجْتُ فُلاَنَةً شَهْراً بِكَذَا فَقَوْلُهٗ تَزَوَّجْتُ ظَاهِرٌ فِى النِّكَاحِ اِلاَّ اَنَّ اِحْتِمَالَ الْمُتْعَةِ قَائِمٌ فَبِقَوْلِهِ شَهْراً فَسَّرَ الْمُرَادَ بِهِ فَقُلْنَا هٰذَا مُتْعَةٌ وَلَيْسَ بِنِكَاحٍ

(An example of Mufassar) **In** *(laws of)* **Shari'ah is when a person says, "I married a certain person for a month in lieu of this** *(Mehr)***." His saying, "I married" is Thaahir for** *(clear and understood by merely listening to refer to)* **Nikaah except that it has the possibility of referring to Mut'aa** *(temporary marriage, which is Haraam)* **and by saying, "for a month" clarifies his meaning. We therefore say that this is Mut'aa** *(and Haraam)* **and is not Nikaah.**

Example Two

وَلَوْ قَالَ لِفُلاَنٍ عَلَيَّ اَلْفٌ مِنْ ثَمَنِ هٰذَا الْعَبْدِ أَوَمِنْ ثَمَنِ هٰذَاالْمَتَاعِ فَقَوْلُهٗ عَلَيَّ اَلْفٌ نَصٌّ فِىْ لُزُوْمِ الأَلْفِ اِلاَّ اَنَّ اِحْتِمَالَ التَّفْسِيْرِ بَاقٍ فَبِقَوْلِهِ مِنْ ثَمَنِ هٰذَا الْعَبْدِ أَوْ مِنْ ثَمَنِ هٰذَا الْمَتَاعِ بَيَّنَ الْمُرَادَ بِهِ فَيَتَرَجَّحُ الْمُفَسَّرُ عَلَى النَّصِّ حَتّٰى لاَ يَلْزَمُهُ الْمَالُ اِلاَّ عِنْدَ قَبْضِ الْعَبْدِ أَوِ الْمَتَاعِ

If a person says to another, "A thousand is due on me for the price of this slave or price of this goods", then his saying, "A thousand is due on me" in making a thousand incumbent *(as debt)* **upon himself is Nas** *(the object and purpose of this statement)* **although the possibility of Tafseer still remains and by saying, "for the price of this slave or price of this goods" his intention is made clear. Thus Mufassar will be given preference over Nas such that the money** *(thousand)* **will not be incumbent upon him until he takes possession of the slave or goods.**

Example Three

وَقَوْلُهٗ عَلَيَّ اَلْفٌ ظَاهِرٌ فِى الاقْرَارِ نَصٌّ فِىْ نَقْدِ الْبَلَدِ فَاذَا قَالَ مِنْ نَقْدِ بَلَدٍ كَذَا يَتَرَجَّحُ الْمُفَسَّرُ عَلَى النَّصِّ فَلاَ يَلْزَمُهٗ نَقْدُ الْبَلَدِ بَلْ نَقْدُ بَلَدٍ كَذَا وَعَلٰى هٰذَا نَظَائِرُه

If a person says to another, "I owe a thousand" then this is Thaahir *(what we understand by merely listening to the statement)* **for confessing** *(to owing a debt)* **and** *(making)* **the currency of the town** *(incumbent himself)* **is Nas** *(the objective of his statement)*. **If he were to say,"from the currency of this certain town"** *(then this would be clarifying his intention and become Mufassar)* **then Mufassar will be given preference over Nas, such that the currency of the town will not be incumbent upon him but** *(rather)* **the currency of the town which was mentioned. So too will similar scenarios be decided** *(that whenever Nas or Thaahir contradicts Mufassar then Mufassar will be given preference)***.**

Definition of Muhkam

وَاَمَّا الْمُحْكَمُ فَهُوَ مَا ازْدَادَ قُوَّةً عَلٰى الْمُفَسَّرِ بِحَيْثُ لاَ يَجُوْزُ خِلاَفُهٗ اَصْلاً

Muhkam is *(a word)* **which stronger then Mufassar** *(in that Ta'weel, Takhsees and Naskh- Abrogation is not possible in Muhkam as opposed to Mufassar in which Ta'weel and Takhsees is not possible but the possibility of Naskh- Abrogation still remains)* **such that acting contrary to it is not permissible at all.**

Example of Muhkam

مِثَالُهُ فِی الْکِتَابِ {اِنَّ اللہ بِکُلِّ شَیٍٔ عَلِیْمٌ} {وَ اِنَّ اللہَ لاَ یَظْلِمُ النَّاسَ شَیْئًا} وَفِی الْحُکْمِیَّاتِ مَا قُلْنَا فِی الاقْرَارِ اِنَّہٗ لِفُلاَنٍ عَلَیَّ اَلْفٌ مِنْ ثَمَنِ هٰذَا الْعَبْدِ فَاِنَّ هٰذَا اللَّفْظَ مُحْکَمٌ فِی لُزُوْمِهِ بَدَلاً عَنْهُ وَعَلیٰ هٰذَا نَظَائِرُه

An example of Muhkam in The Quraan is *(the verses)***, "Undoubtedly ALLAAH has knowledge over everything"** *(such that it is impossible to deny ALLAAH's attribute of Ilm or even limit it in the least)* **and "Undoubtedly ALLAAH does not oppress people in the least"** *(such that it is impossible to claim that ALLAAH has oppressed anyone or anything even in the slightest)***. An example of it** *(Muhkam)* **in Hukmiyaat** *(laws of Shari'ah)* **is what we say when a person confesses, "Undoubtedly I owe a certain person one thousand in lieu of the price of this slave". As Undoubtedly these words** *(in lieu f this slave)* **are Muhkam in it being in exchange for it** *(claries that the thousand is in exchange for the slave)***. So too will similar scenarios be decided.**

Ruling of Mufassar and Muhkam

وَحُکْمُ الْمُفَسَّرِ وَ الْمُحْکَمِ لُزُوْمُ الْعَمَلِ بِهِمَا لاَ مُحَالَةَ

The ruling of Mufassar and Muhkam is that it compulsory to act on it without any doubt *(in its purport and application)***.**

The opposite of Thaahir, Nas, Mufassar, and Muhkam

ثُمَّ لِهٰذِهِ الأَرْبَعَةِ اَرْبَعَةٌ اُخْرٰی تُقَابِلُهَا فَضِدُّ الظَّاهِرِ الْخَفِیُّ وَضِدُّ النَّصِّ اَلْمُشْکِلُ وَضِدُّ الْمُفَسَّرِ الْمُجْمَلُ وَ ضِدُّ الْمُحْکَمِ الْمُتَشَابِهُ

Then each of these four *(Thaahir, Nas, Mufassar, and Muhkam)* **have another four which are opposite to them.**

The opposite of Thaahir is Khafie, the opposite of Nas is Mushkil, the opposite of Mufassar is Mujmal, and the opposite of Muhkam is Mutashaabih.

Definition of Khafie

فَالْخَفِىُّ مَا خَفِىَ الْمُرَادُ بِهِ بِعَارِضٍ لاَمِنْ حَيْثُ الصِّيْغَةِ

Khafie is a word whose meaning is obscured *(unclear)* **because of external factors** *(the intention of the speaker is unclear)* **and not because of the word itself** *(being unclear in its meaning and connotation)***.**

Example One

مِثَالُهٗ فِىْ قَوْلِهِ تَعَالىٰ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوْا اَيْدِيَهُمَا} فَاِنَّهٗ ظَاهِرٌ فِى حَقِّ السَّارِقِ خَفِىٌّ فِىْ حَقِّ الطَّرَّارِ وَالنَّبَّاشِ

An example of Khafie is the verse,

{وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوْا اَيْدِيَهُمَا}

"As for the male and female thief, cut off their *(right)* **hands."** *(Surah Maa'idah: 28)*

Which is Thaahir (*clear in its implication)* **with regards to a 'Saariq'** *(a thief who steals quietly and in secrecy in the dead of night without being seen)* **but obscure** *(unclear)* **with regards to a Tharraar** *(pickpocket)* **and Nabbaash** *(grave-robber)***.**

Example Two

وَكَذٰلِكَ قَوْلُهُ تَعَالىٰ {اَلزَّانِيَةُ وَالزَّانِىْ} ظَاهِرٌ فِىْ حَقِّ الزَّانِىْ وَخَفِّىٌ فِىْ حَقِّ اللُّوْطِىِّ

Similarly *(another example of Khafie)* **is the verse,**

{اَلزَّانِيَةُ وَالزَّانِىْ}

"The *(unmarried)* **female and male who commit fornication** *(should both be given a hundred lashes)***."** *(Surah Noor: 2)*
Is Thaahir *(clear in its meaning)* **with regards to one who commits fornication but Khafie** *(unclear)* **with regards to sodomy** *(homosexuality)***.**

Example Three

وَلَوْ حَلَفَ لاَ يَأكُلُ فَاكِهَةً كَانَ ظَاهِراً فِيْمَا يَتفَكَّهُ بِهِ خَفِيًّا فِىْ حَقِّ الْعِنَبِ وَالرُّمَّانِ

(Another example of Khafie is) **If a person takes an oath that he will not eat fruit, then this is Thaahir** *(clear in its meaning)* **with regards to that eaten as an entrée** *(as a side dish or as afters)* **but Khafie** *(unclear)* **with regards to grapes and pomegranate** *(as grapes and pomegranates are eaten as a meal as well and not only as a side dish)***.**

Ruling of Khafie

وَحُكْمُ الْخَفِىِّ وَجُوْبُ الطَّلَبِ حَتّٰى يَزُوْلَ عَنْهُ الْخِفَاءُ

The ruling of Khafie is that it is Waajib to seek out *(its implication)* **such that its obscurity** *(vagueness, uncertainty)* **is removed** *(after which its ruling will be the same as Thaahir)***.**

Definition of Mushkil

وَاَمَّا الْمُشْكِلُ فَهُوَ مَا ازْدَادَ خِفَاءً عَلَى الْخَفِيِّ كَأَنَّهُ بَعْدَ مَا خَفِيَ عَلَى السَّامِعِ حَقِيْقَتُهٗ دَخَلَ فِيْ اَشْكَالِهٖ وَ اَمْثَالِهٖ حَتّٰى لاَ يَنَالُ الْمُرَادُ اِلاَّ بِالطَّلَبِ ثُمَّ بِالتَّأَمُّلِ حَتّٰى يَتَمَيَّزَ عَنْ اَمْثَالِهٖ

Mushkil is that *(word)* **which is more obscure** *(unclear)* **than Khafie that is to say after its intended meaning** *(implication)* **has been obscured** *(because the meaning of the word itself is unclear)* **it resembles** *(other)* **words similar to it such that its implication cannot be ascertained except through investigation and deliberation until it** *(its meaning)* **is distinguished from others** *(other words)* **similar to it.**

Example of Mushkil

وَنَظِيْرُهٗ فِى الأَحْكَامِ حَلَفَ لاَ يَأْتَدِمُ فَاِنَّهٗ ظَاهِرٌ فِى الْخَلِّ وَالدِّبْسِ وَاِنَّمَا هُوَ مُشْكِلٌ فِى اللَّحْمِ وَالْبَيْضِ وَالْجُبْنِ حَتّٰى يُطْلَبَ فِيْ مَعْنَى الايْتِدَامِ ثُمَّ يُتَأَمَّلُ اَنَّ ذٰلِكَ الْمَعْنٰى هَلْ يُوْجَدُ فِى اللَّحْمِ وَالْبَيْضِ وَالْجُبْنِ أَمْ لاَ

An example of Mushkil in Ahkaam *(laws of Shari'ah)* **is if a person takes an oath that he will not eat 'Iedaam'** *(a condiment, any item or food used to improve or add flavour)***, which is Thaahir** *(clear in its implication)* **with regards to vinegar and juice** *(as they are definitely condiments used to improve or add flavour)* **but Mushkil** *(obscure and unclear)* **with regards to** *(curry prepared with)* **meat, eggs or cheese** *(as these are not condiments but rather the main course)* **such that the meaning of 'Iedaam' needs to be sought out and deliberated upon until one is able distinguish whether the meaning of 'Iedaam' is found in them** *(meat, eggs and cheese)* **or not.**

Definition of Mujmal

ثمَّ فَوْقَ الْمُشْكِلِ الْمُجْمَلُ وَهُوَ مَا احْتَمَلَ وُجُوْهاً فَصَارَ بِحَالٍ لاَ يُوْقَفُ عَلَى الْمُرَادِ بِهِ اِلاَّ بِبَيَان مِنْ قِبَلِ الْمُتَكَلِّمِ

Then above Mushkil *(more unclear and obscure)* **is Mujmal. Mujmal is a word having many implications such that none** *(no implication)* **can be specified except if clarified by the speaker** *(and in the case Shari'ah clarified or explained by ALLAAH Ta'ala in the Quraan or by Rasulullaah ﷺ)*.

Example of Mujmal

وَنَظِيْرُهٗ فِيْ الشَّرْعِيَّاتِ قَوْلُهٗ تَعَالىٰ {حَرَّمَ الرِّبٰو} فَاِنَّ الْمَفْهُوْمَ مِنَ الرِّبٰوا هُوَ الزِّيَادَةُ الْمُطْلَقَةُ وَ هِيَ غَيْرُ مُرَاد بَلِ الْمُرَادُ اَلزِّيَادَةُ الْخَالِيَةُ عَنِ الْعِوَضِ فِيْ بَيْعِ الْمُقَدَّرَاتِ الْمُتَجَانِسَةِ وَ اللَّفْظُ لاَ دَلاَلَةَ لَهٗ عَلىٰ هٰذَا فَلاَ يَنَالُ الْمُرَادُ بِالتَّأَمُّلِ

An example of Mujmal is Shari'ah is the verse, "And prohibited Riba" as the meaning of Riba refers to any form of excess *(gain or profit)*, **which is not implied but rather that excess** *(gain or profit is implied)* **which has no item is exchange for it in the sale of like items having the same scale of measurement. The word** *(Riba)* **does not indicate** *(or specify)* **this nor can this meaning be ascertained through deliberation** *(instead Rasulullaah ﷺ explained its meaning to the Sahabah)*.

Definition of Mutashaabih

ثُمَّ فَوْقَ الْمُجْمَلِ فِى الْخِفَاءِ اَلْمُتَشَابِهُ مِثَالُ الْمُتَشَابِهِ الْحُرُوْفُ الْمُقَطَّعَاتُ فِيْ اَوَائِلِ السُّوَرِ

Then more obscure and unclear than Mujmal is Mutashaabih *(a word that is so unclear and obscure that*

*there is no hope of meaning being clarified in this worldly life)***.** **An example of Mutashaabih is the Huroof-Muqathi'aat in the beginning of** *(certain)* **Surahs.**

Ruling of Mujmal and Mutashaabih

وَحُكْمُ الْمُجْمَلِ وَالْمُتَشَابِهِ اِعْتِقَادُ حَقِيْقَةِ الْمُرَادِ بِهِ حَتّٰى يَأْتِىَ الْبَيَانُ

The ruling of Mujmal and Mutashaabih is that we believe its meaning *(and implication)* **is correct until it is explained.**

Lesson on those instances where the meaning of Haqeeqat is abandoned

فصل

فِيْمَا يُتْرَكُ بِهِ حَقَائِقُ الأَلْفَاظِ وَمَا يُتْرَكُ بِهِ حَقِيْقَةُ اللَّفْظِ خَمْسَةُ اَنْوَاعٍ

There are five instances where the meaning of Haqeeqat is abandoned.

The first instance: Dalaalatul Urf

اَحَدُهَا دَلاَلَةُ الْعُرْفِ وَذٰلِكَ لانَّ ثُبُوْتَ الأَحْكَامِ بِالأَلْفَاظِ اِنَّمَاكَانَ لِدَلاَلَةِ اللَّفْظِ عَلٰى مُرَادِ الْمُتَكَلِّمِ فَاِذَا كَانَ الْمَعْنىٰ مُتَعَارِفاً بَيْنَ النَّاسِ كَانَ ذٰلِكَ الْمَعْنٰى الْمُتَعَارَفُ دَلِيْلاً عَلَى اَنَّهُ هُوَ الْمُرَادُ بِهِ ظَاهِراً فَيَتَرَتَّبُ عَلَيْهِ الْحُكْمُ

One of them *(the five instances where the meaning of Haqeeqat is abandoned is)* **'Dalaalatul Urf'** *(when a word has a common and known meaning in society)* **and the reason for this is that Ahkaam** *(laws of Shari'ah)* **are established by the intention with which the speaker says** *(or utters)* **the word. When a meaning is well-known** *(common)* **amongst people**

then this known meaning will be proof that this was the apparent intention *(or implication of the speaker)* **and the ruling will be based upon it** *(the common and known meaning)***.**

Example of abandoning Haqeeqat for Urf

مِثَالُهٗ لَوْحَلَفَ لاَ يَشْتَرِى رَاْسًا فَهُوَ عَلٰى مَا تَعَارَفَهُ النَّاسُ فَلاَ يَحْنَثُ بِرَأسِ الْعُصْفُوْرِ وَالْحَمَامَةِ

If a person takes an oath that he will not buy a head then this will refer to that which is known *(and common)* **amongst people. Thus he will not be breaking be breaking his oath if he buys the head of a sparrow or pigeon** *(as head commonly refers to the head of a sheep, cow, or goat)***.**

وَكَذٰلِكَ لَوْحَلَفَ لاَ يَأكُلُ بَيْضاً كَانَ ذٰلِكَ عَلَى الْمُتَعَارَفِ فَلاَ يَحْنَثُ بِتَنَاوُلِ بَيْضِ الْعُصْفُوْرِ وَالْحَمَامَةِ

Similarly *(another example of abandoning the meaning of Haqeeqat for the commonly used meaning of Urf is)* **if a person takes an oath that he will not eat eggs then this will be based upon the commonly used meaning** *(for eggs)* **and he will not be break his oath by eating the eggs of sparrows or pigeons** *(if that is not the commonly used meaning of eggs in society)***.**

وَبِهٰذَا ظَهَرَ اَنَّ تَرْكَ الْحَقِيْقَةِ لاَ يُوْجِبُ الْمَصِيْرَ اِلَى الْمَجَازِ بَلْ جَازَ أَنْ تَثْبُتَ بِهِ الْحَقِيْقَةُ الْقَاصِرَةُ وَمِثَالُهٗ تَقْيِيْدُ الْعَامِّ بِالْبَعْضِ

From this *(the above mentioned examples)* **we learn that abandoning Haqeeqat does not make taking the meaning of Majaaz compulsory but it is permissible to award it a lesser meaning of Haqeeqat** *(known as Haqeeqat-Qaasirah)***. An example of this** *(Haqeeqat-Qaasirah)* **is applying a general**

ruling on only some of its constituents *(such as in the above example where the word eggs, which is general, was taken to refer to only those types of eggs which are commonly referred to by the word)***.**

وَكَذٰلِكَ لَوْ نَذَرَ حَجًّا أَوْ مَشْياً اِلٰى بَيْتِ اللهِ تَعَالىٰ أَوْ أَنْ يَضْرِبَ بِثَوْبِهٖ حَطِيْمَ الْكَعْبَةِ يَلْزَمُهُ الْحَجُّ بِأَفْعَالٍ مَعْلُوْمَةٍ لِوُجُوْدِ الْعُرْفِ

Similarly *(another example of abandoning the meaning of Haqeeqat for the commonly used meaning of Urf is)* **if a person makes a vow for Hajj or that he will walk to the Baitullaah or that he will touch the Hateem of the Ka'abah with his cloth then performing Hajj in the known manner will become incumbent upon him because of Urf** *(since this is the commonly understood meaning of Hajj in society)***.**

The second instance: Dalaalatufi nafsil Kalaam

وَالثَّانِىْ قَدْ تُتْرَك الْحَقِيْقَةُ بِدَلاَلَةٍ فِىْ نَفْسِ الْكَلاَمِ

The second instance where *(the meaning of)* **Haqeeqat is abandoned is because of 'Dalaalatu fi nafsil Kalaam'** *(wherein the words of the speaker suggest that the meaning of Haqeeqat is not implied)***.**

Example of abandoning Haqeeqat because 'Dalaalatu fi nafsil Kalaam'

مِثَالُهٗ اِذَا قَالَ كُلُّ مَمْلُوْكٍ لِىْ فَهُوَ حُرٌّ لَمْ يُعْتَقْ مُكَاتَبُوْهُ وَلاَ مَنْ أُعْتِقَ بَعْضُهٗ اِلاَّ اِذَا نَوىٰ دُخُوْلَهُمْ لانَّ لَفْظَ الْمَمْلُوْكِ يَتَنَاوَلُ الْمَمْلُوْكَ مِنْ كُلِّ وَجْهٍ وَالْمُكَاتَبُ لَيْسَ بِمَمْلُوْكٍ مِنْ كُلِّ وَجْهٍ وَلِهٰذَا لَمْ يَجُزْ تَصَرُّفُهٗ فِيْهِ وَلاَ يَحِلُّ لَهُ وَطْئُ الْمُكَاتَبَةِ وَلَوْ تَزَوَّجَ الْمُكَاتَبُ بِنْتَ مَوْلاَهُ ثُمَّ مَاتَ الْمَوْلٰى وَوَرَثَتْهُ الْبِنْتُ لَمْ يَفْسُدِ النِّكَاحُ وَاِذَا لَمْ يَكُنْ مَمْلُوْكاً مِنْ كُلِّ وَجْهٍ لاَ يَدْخُلُ تَحْتَ لَفْظِ الْمَمْلُوْكِ الْمُطْلَقِ وَهٰذَا بِخِلاَفِ الْمُدَبَّرِ وَاُمِّ الْوَلَدِ فَاِنَّ

الْمِلْكَ فِيْهَا كَامِلٌ وَلِذَا حَلَّ وَطْئُ الْمُدَبَّرَةِ وَاُمِّ الْوَلَدِ وَاِنَّمَا النُّقْصَانُ فِى الرِّقِّ مِنْ حَيْثُ اَنَّه يَزُوْلُ بِالْمَوْتِ لاَ مَحَالَةَ

If a person says, "Every slave that I own is free" then his Makaatab *(slave with whom the master has made an agreement that if they pay him a stipulated amount they will be set free)* **and such a slave whom a part** *(share)* **has been set free will not be freed except if he made the intention for them** *(to be included in his statement)*. **The reason for this** *(the above mentioned slaves not being included)* **is that the word 'Mamlook'- owned slave is Mutlaq** *(free from any restriction or clause)* **and refers to that slave who is owned entirely, and a Makaatab is not owned entirely, which is why it is not permissible for one to execute any transaction on him nor is it permissible to indulge in intercourse with a female Makaatab** *(because one does not have complete ownership of such a slave)*. *(Another proof that one does not have complete ownership of a Makaatab is)***If a Makaatab marries the daughter of his master and the master then dies resulting in the daughter inheriting the slave then the Nikaah will not be invalidated** *(as she does not have complete ownership over which would otherwise invalidate the Nikaah)*. **Since he** *(the Makaatab)* **is not owned entirely he will not be included under the word 'Mamlook'- owned slave. This ruling is contrary to that regarding a Mudabbar** *(a slave whom the master has told will be free on his death)* **or Umie Walad** *(a slave who gave birth to the child of her master)* **as ownership in them is complete and therefore** *(since ownership is complete)* **it would be permissible to have intercourse with both a female Mudabbar and Umie Walad. The defect in reality is in her slavery as it will terminate on the death of her master without any doubt.**

وَعَلٰى هٰذَا قُلْنَا اِذَا اَعْتَقَ الْمُكَاتَبَ عَنْ كَفَّارَةِ يَمِيْنِه اَوْظِهَارِه جَازَ وَلَا يَجُوْزُ فِيْهِمَا اِعْتَاقُ الْمُدَبَّرِ وَاُمِّ الْوَلَدِ لِاَنَّ الْوَاجِبَ هُوَ التَّحْرِيْرُ وَهُوَ اِثْبَاتُ

الْحُرِّيَّةِ بِاِزَالَةِ الرِّقِّ فَاِذَا كَانَ الرِّقُّ فِى الْمُكَاتَبِ كَامِلاً كَانَ تَحْرِيْرُه
تَحْرِيْرًا مِّنْ جَمِيْعِ الْوُجُوْهِ وَ فِى الْمُدَبَّرِ وَاُمِّ الْوَلَدِ لَمَّا كَانَ الرِّقُّ نَاقِصًا لاَ
يَكُوْنُ التَّحْرِيْرُ تَحْرِيْرًا مِّنْ كُلِّ الْوُجُوْهِ

Based upon this *(difference between a Makaatab and a Mudabbar, Umie Walad such that in the Makaatab)* **we say that if a Makaatab is set free for his Kaffaarah for breaking an oath or for Thihaar** *(when one compared his wife to a blood relative)* **it is permissible** *(and his Kaffaarah will be fulfilled)*. **However to set a Mudabbar and Umie Walad free will not be permissible because to set** *(a slave)* **free is Waajib, which literally means establishing freedom by removing** *(the quality of)* **slavery and since slavery in the Makaatab is complete, setting him free will be 'setting free' in totality whereas in the Mudabbar and Umie Walad, since the slavery is defective, setting them free will not be 'setting free' in totality.**

The third instance: Dalaalatu Siyaaqil Kalaam

وَالثَّالِثُ قَدْ يُتْرَكُ الْحَقِيْقَةُ بِدَلاَ لَةِ سِيَاقِ الْكَلاَمِ

The third instance where *(the meaning of)* **Haqeeqat is abandoned is because of 'Dalaalatul Siyaaqil Kalaam'** *(when the preceding or forthcoming speech suggests that the meaning of Haqeeqat is not implied)*.

Example of abandoning Haqeeqat because of 'Dalaalatu Siyaaqil Kalaam'

قَالَ فِى السِّيَرِ الْكَبِيْرِ اِذَا قَالَ الْمُسْلِمُ لِلْحَرْبِىِّ اِنْزِلْ فَنَزَلَ كَانَ اٰمِناً وَلَوْ
قَالَ اِنْزِلْ اِنْ كُنْتَ رَجُلاً فَنَزَلَ لَا يَكُوْنَ اٰمِناً وَلَوْ قَالَ الْحَرْبِىُّ اَلْاَمَانَ
اَلاَمَانَ فَقَالَ الْمُسْلِمُ اَلْاَمَانُ اَلْاَمَانُ كَانَ اٰمِناً وَلَوْ قَالَ اَلْاَمَانُ سَتَعْلَمُ مَا تَلْقٰى
غَدًا وَلاَ تَعْجَلْ حَتّٰى تَرٰى فَنَزَلَ لَا يَكُوْنُ اٰمِناً

It is mentioned in 'As-Siyarul Kabeer' *(of Imaam Muhammed)***, when a Muslim tells an enemy combatant, "Step down!" then he will be given sanctuary.** *(However)* **If he says, "Step down, if you are a man" and the enemy then steps down, he** *(the enemy)* **will not be given sanctuary** *(because the second statement, "If you are a man", is a threat more than a promise of sanctuary)***. If the enemy combatant says, "***(Give me)* **Sanctuary!** *(Give me)* **Sanctuary!" and the Muslim replies, "***(I give)* **Sanctuary!** *(I give)* **Sanctuary!" then he will be given sanctuary.** *(However)* **if the Muslim replies** *(by saying)***, "Sanctuary, you will see what will happen tomorrow, so do not be hasty until you see" and the enemy then steps down, he will not be given sanctuary.**

وَلَوْ قَالَ اِشْتَرِلِیْ جَارِیَةً لِتَخْدِ مَنِیْ فَاشْتَرَی الْعَمْیَاءَ اَوِ الشَّلاَّءَ لَا یَجُوْزُ وَلَوْ قَالَ اِشْتَرِلِیْ جَارِیَةً حَتّٰی اَطَاهَا فَاشْتَرَیٰ اُخْتَهٗ مِنَ الرَّضَاعِ لاَیَکُوْنُ عَنِ الْمُوَکِّلِ

If a person says *(to another)***, "Purchase a slave for me, who will be of service to me" and the latter** *(the Wakeel)* **then buys a blind or disabled, it will not be permissible** *(and the loss will be borne by the Wakeel and the slave will be his)***. If he said, "Purchase a slave for me, so that I may have intercourse with her" and the latter** *(Wakeel)* **purchases the foster-sister of the former** *(Muwakkil)* **then the slave will not belong to the Muwakkil** *(but rather the loss will be borne by the Wakeel and the slave will be his)***.**

وَعَلیٰ هٰذا قُلْنَا فِیْ قَوْلِهِ عَلَیْهِ السَّلاَمُ اِذَا وَقَعَ الذُّبَابُ فِیْ طَعَامِ اَحَدِ کُمْ فَامْقُلُوْهُ ثُمَّ انْقُلُوْهٗ فَاِنَّ فِیْ اِحْدیٰ جَنَاحَیْهِ دَاءً وَفِی الْاُخْریٰ دَوَاءً وَاِنَّهٗ لَیُقَدِّمَ الدَّاءَ عَلَی الدَّوَاءِ دَلَّ سِیَاقُ الْکَلاَمِ عَلٰی اَنَّ الْمَقْلَ لِدَفْعِ الْاَذیٰ عَنَّا لاَ لِاَمْرِتَعَبُّدِیٍّ حَقًّا لِلشَّرْعِ فَلاَ یَکُوْنُ لِلْاِیْجَابِ

Based upon this *(that the meaning of Haqeeqat is abandoned because of the preceding or forthcoming speech)* **we say in the Hadeeth, "If a fly falls into food, push it in** *(immerse it into the food)* **and then remove it because one of its wings carries disease and the other the cure and the disease precedes the cure" latter statement** *(of Rasulullaah that the wings contain a disease and cure)* **establishes that the order to push the fly in** *(immerse it)* **is to save us from harm not** *(that it is)* **an act of Ibaadat in Shari'ah and it** *(to immerse the fly)* **will therefore not be Waajib.**

وَ قَوْلُهٗ تَعَالٰى اِنَّمَا الصَّدَقَاتُ لِلْفُقَرَآءِ عَقِيْبَ قَوْلِهٖ تَعَالٰى وَ مِنْهُمْ مَّنْ يَّلْمِزُكَ فِى الصَّدَقَاتِ يَدُلُّ عَلٰى اَنَّ ذِكْرَ الْاَصْنَافِ لِقَطْعِ طَمْعِهِمْ مِنَ الصَّدَقَاتِ بِبَيَانِ الْمَصَارِفِ لَهَا فَلاَ يَتَوَقَّفُ الْخُرُوْجُ عَنِ الْعُهْدَةِ عَلَى الْاَدَاءِ اِلَى الْكُلِّ

And the verse,

اِنَّمَا الصَّدَقَاتُ لِلْفُقَرَآءِ

"Alms *(Zakaah)* **are only for the poor..."** *(Surah Taubah: 60)*

Being mentioned after the verse,

وَ مِنْهُمْ مَّنْ يَّلْمِزُكَ فِى الصَّدَقَاتِ

"Among them *(Munafiqeen)* **are** *(also)* **those who mock you concerning** *(the distribution of)* **charity."** *(Surah Taubah: 58)*

establishes that mentioning those upon whom Zakaat should be spent was to put end to the greed *(of the Munafiqeen)* **for Zakaat, thus absolving oneself from** *(the fulfilment of)* **Zakaat is not dependant on distributing**

Zakaat to all *(eight categories mentioned in the verse above, as is the opinion of Imaam Shaafie)***.**

The fourth instance: 'Dalaalatu min Qibalil Mutakalim'

وَالرَّابِعُ قَدْ تُتْرَكُ الْحَقِيْقَةُ بِدَلَالَةٍ مِّنْ قِبَلِ الْمُتَكَلِّمِ

The fourth instance where *(the meaning of)* **Haqeeqat is abandoned is because of 'Dalaalatu min Qibalil Mutakalim'***(when the condition of the speaker suggests that the meaning of Haqeeqat is not implied)*

Example of abandoning Haqeeqat because of 'Dalaalatu min Qibalil Mutakalim'

مِثَالُهٗ فِىْ قَوْلِه تَعَالٰى {فَمَنْ شَآءَ فَلْيُؤْمِنْ وَّمَنْ شَآءَ فَلْيَكْفُرْ } وَذٰلِكَ لِاَنَّ اللهَ تَعَالٰى حَكِيْمٌ وَالْكُفْرُ قَبِيْحٌ وَالْحَكِيْمُ لَا يَاْمُرُ بِهٖ فَيُتْرَكُ دَلَالَةُ اللَّفْظِ عَلَى الْاَمْرِ بِحُكْمِ الْامِرِ

An example *(where the meaning of Haqeeqat is abandoned because the condition of the speaker suggests that Haqeeqat is not implied)* **is the verse,**

{فَمَنْ شَآءَ فَلْيُؤْمِنْ وَّمَنْ شَآءَ فَلْيَكْفُرْ }

"So whoever desires, believe *(bring Imaan)* **and whoever desires, disbelieve** *(make Kufr)***."**

The reason for this *(why the meaning of Haqeeqat, to resort to Kufr if one so desires, is not implied here)* **is that ALLAAH Ta'ala is Most Wise** *(has the most perfect wisdom)* **and Kufr** *(disbelief)* **is abhorred** *(detested and disliked by ALLAAH)***, and** *(ALLAAH)* **the Most Wise will never instruct such an**

act *(which is abhorred and disliked by ALLAAH)***. Thus the Haqeeqat** *(literal meaning)* **will be disregarded here because of the Wisdom of ALLAAH.**

وَ عَلٰى هٰذَا قُلْنَا اِذَا وَكَّلَ بِشِرَاءِ اللَّحْمِ فَاِنْ كَانَ مُسَافِرًا نَزَلَ عَلَى الطَّرِيْقِ فَهُوَ عَلَى الْمَطْبُوْخِ اَوْ عَلَى الْمَشْوِيِّ وَاِنْ كَانَ صَاحِبَ مَنْزِلٍ فَهُوَ عَلَى النَّيِّ

Based upon this *(principle that the meaning of Haqeeqat will be abandoned because of the condition of the speaker)* **we say that if a person** *(Muwakkil)* **appoints another** *(makes another Wakeel)* **to purchase meat and he** *(i.e. the Muwakkil or speaker)* **is a Musaafir** *(traveller)***, who has stopped on the road, then it will refer to cooked meat** *(as utensils for cooking are usually not available during a journey thus the condition of the speaker; being a traveller, dictates that it refers to cooked meat)* **and if he** *(the speaker)* **is at home then it will refer to raw meat** *(as the utensils for cooking are present when one is at home)***.**

وَمِنْ هٰذَا النَّوْعِ يَمِيْنُ الْفَوْرِ مِثَالُهٗ اِذَا قَالَ تَعَالْ تَغَدَّ مَعِىْ فَقَالَ وَاللهِ لَا اَتَغَدّٰى يَنْصَرِفُ ذٰلِكَ اِلَى الْغَدَاءِ الْمَدْعُوِّاِلَيْهِ حَتّٰى لَوْ تَغَدّٰى بَعْدَ ذٰلِكَ فِىْ مَنْزِلِهٖ مَعَهٗ اَوْ مَعَ غَيْرِهٖ فِىْ ذٰلِكَ الْيَوْمِ لَا يَحْنَثُ

Also from this category *(where Haqeeqat is abandoned because of the condition of the speaker)* **is 'Yameenul For'** *(immediate oath, which refers to a situation or scenario occurring at that particular time)***. For example, if a person says, "Come have breakfast with me" and the latter replies, "I take an oath by ALLAAH I will not have breakfast", then this will refer to the breakfast to which he was invited** *(at that moment)* **such that if he ever has breakfast with him** *(the one who invited him)* **in his home thereafter** *(on another*

day) **or even with another person on that same day, he will not be breaking his oath.**

وَكَذَا اِذَا قَامَتِ الْمَرْاَةُ تُرِيْدُ الْخُرُوْجَ فَقَالَ الزَّوْجُ اِنْ خَرَجْتِ فَاَنْتِ كَذَا كَانَ الْحُكْمُ مَقْصُوْرًا عَلَى الْحَالِ حَتّٰى لَوْ خَرَجَتْ بَعْدَ ذٰلِكَ لَا يَحْنَثُ

In the same manner *(as the ruling for 'Yameenul-for')* **is if a woman stands to leave and her husband tells her, "If you leave then you are...** *(divorced, or whatever repercussion is mentioned)***" then this statement will be restricted to that moment such that if she leaves later** *(at a later time or on another day)* **the decree husband will apply** *(a divorce, etc she will occur)***.**

The fifth instance: Dalaalatu Mahallil Kalaam'

وَالْخَامِسُ قَدْ تُتْرَكُ الْحَقِيْقَةُ بِدَلَالَةِ مَحَلِّ الْكَلَامِ بِاَنْ كَانَ الْمَحَلُّ لَا يَقْبَلُ حَقِيْقَةَ اللَّفْظِ

The fifth instance where *(the meaning of)* **Haqeeqat is abandoned is because of 'Dalaalatu Mahallil Kalaam', such that the** *(meaning of)* **Haqeeqat will does not fit on that Mahal** *(time, place or person)***.**

<u>Example of abandoning Haqeeqat because of 'Dalaalatu Mahallil Kalaam'</u>

وَ مِثَالُهٗ اِنْعِقَادُ نِكَاحِ الْحُرَّةِ بِلَفْظِ الْبَيْعِ وَالْهِبَةِ وَالتَّمْلِيْكِ وَالصَّدَقَةِ

An Example *(of abandoning Haqeeqat because the meaning of Haqeeqat cannot apply to that person, place or time)* **is contracting a Nikaah with a free woman using the words of Bay'a** *(saying "sell yourself to me")***, Hibah** *(saying "gift yourself to me")***, Tamleek** *(saying, "Give ownership of*

yourself to me"), **or Sadaqah** *(since the literal meaning is impossible to apply here, we say that it refers to Nikaah)***.**

وَ قَوْلُهٗ لِعَبْدِهٖ وَهُوَ مَعْرُوْفُ النَّسَبِ مِنْ غَيْرِهٖ هٰذَا اِبْنِىْ

And saying to one's slave, whose lineage to another is well-known, "This is my son" *(since the literal meaning is impossible to apply here, we say the slave will be set free)***.**

وَكَذَا اِذَا قَالَ لِعَبْدِهٖ وَهُوَ اَكْبَرُ سِنًّا مِنَ الْمَوْلٰى هٰذَا اِبْنِىْ كَانَ مَجَازًا عَنِ الْعِتْقِ عِنْدَ اَبِىْ حَنِيْفَةَ خِلَافاً لَهُمَا بِنَاءً عَلٰى مَا ذَكَرْنَا اَنَّ الْمَجَازَ خَلْفٌ عَنِ الْحَقِيْقَةِ فِىْ حَقِّ اللَّفْظِ عِنْدَهٗ وَفِىْ حَقِّ الْحُكْمِ عِنْدَهُمَا

Similarly if he says to a slave who is elder than him, "This is my son" it will be Majaaz for setting the slave free according to Imaam Abu Hanifah as opposed to Imaam Abu Yusuf and Imaam Muhammed as we have already discussed *(in the discussion of Haqeeqat and Majaaz)* **that Majaaz is a substitute for Haqeeqat in speech according to Imaam Abu Hanifah and according to Imaam Abu Yusuf and Imaam Muhammed a substitute for the ruling.**

Lesson on the manner in which rulings are derived

فصل فى متعلقات النصوص

نَعْنِىْ بِهَا عِبَارَةَ النَّصِّ وَ اِشَارَتَهٗ وَ دَلَالَتَهٗ وَاِقْتِضَائَه

This is a lesson on the manner in which rulings are derived *(by examining the meaning of words)***, that is by Ibaaratun Nas, Ishaaratun Nas, Dalaalatun Nas, and Iqtidha'un Nas.**

Definition of Ibaaratun Nas

فَاَمَّا عِبَارَةُ النَّصِّ فَهُوَ مَا سِيْقَ الْكَلاَمُ لِاَجَلِهٖ وَاُرِيْدَ بِهٖ قَصْدًا

Ibaaratun Nas is *(refers to)* **the purpose for which the speech was intended and** *(or what is)* **intentionally implied.**

Definition of Ishaaratun Nas

وَاَمَّا اِشَارَةُ النَّصِّ فَهِىَ مَا ثَبَتَ بِنَظْمِ النَّصِّ مِنْ غَيْرِ زِيَادَةٍ وَ هُوَ غَيْرُ ظَاهِرٍ مِنْ كُلِّ وَجْهٍ وَلَا سِيْقَ الْكَلاَمُ لِاَجَلِه

Ishaaratun Nas is *(refers to)* **the ruling which a word of the speech proves without** *(any)* **addition** *(of text or speech)***, is not entirely clear** *(but reflection and contemplation is required)***, nor was it** *(this meaning)* **the purpose of the speech.**

Example of Ibaaratun Nas and Ishaaratun Nas

مِثَالُهٗ فِىْ قَوْلِهٖ تَعَالٰى {لِلْفُقَرَآءِ الْمُهَاجِرِيْنَ الَّذِيْنَ اُخْرِجُوْا مِنْ دِيَارِهِمْ} اَلْاٰيَةُ فَاِنَّهٗ سِيْقَ لِبَيَانِ اِسْتِحْقَاقِ الْغَنِيْمَةِ فَصَارَنَصًّا فِىْ ذٰلِكَ وَقَدْ ثَبَتَ فَقْرُهُمْ بِنَظْمِ النَّصِّ فَكَانَ اِشَارَةً اِلٰى اَنَّ اِسْتِيْلَاءَ الْكَافِرِ عَلٰى مَالِ الْمُسْلِمِ سَبَبٌ لِثُبُوْتِ الْمِلْكِ لَلْكَافِرِاِذْ لَوْ كَانَتِ الْاَمْوَالُ بَاقِيَةً عَلٰى مِلْكِهِمْ لَا يَثْبُتُ فَقْرُهُمْ

An example of *(Ibaaratun Nas and Ishaaratun Nas)* **is the verse,**

{لِلْفُقَرَآءِ الْمُهَاجِرِيْنَ الَّذِيْنَ اُخْرِجُوْا مِنْ دِيَارِهِمْ}

"*(A share of the booty received without a fight is also reserved)* **For the poor Muhaajireen who were removed from their and their possessions."** *(Surah Hashar: 8)*

As the purpose of this verse was to mention that those who have a right to the booty *(namely the poor Muhaajireen)* **and is therefore the Ibaaratun Nas** *(the purpose intended by this speech)* **and them being poor is proven by a word in the speech** *(the word '*فُقَرَاءِ*'- poor, refers to that person who has no wealth or wealth less than the Nisaab of Zakaat)* **which indicates that ownership is transferred to a Kaafir if they** *(Kuffaar)***seize the belongings of Muslims***(which is Ishaaratun Nas)* **as** *(the reason for this substantiation that ownership is transferred in such a case is that)* **they would not be poor if their** *(the Muslim's)* **property still remained in their possession** *(and did not transfer to the Kuffaar).*

Rulings derived from the above

يَخْرُجُ مِنْهُ الْحُكْمُ فِيْ مَسْئَلَةِ الْاِسْتِيْلاَءِ وَ حُكْمُ ثُبُوْتِ الْمِلْكِ لِلتَّاجِرِ بِالشِّرَاءِ مِنْهُمْ وَ تَصَرُّفَاتِه مِنَ الْبَيْعِ وَالْهِبَةِ وَالْاِ عْتَاقِ وَ حُكْمُ ثُبُوْتِ الْاِسْتِغْنَامِ وَ ثُبُوْتِ الْمِلْكِ لِلْغَازِىْ وَ عِجْزِ الْمَالِكِ عَنْ اِنْتَزَاعِه مِنْ يَدِه وَ تَفْرِيْعَاتِه

(As a result of the Ishaaratun Nas of this verse) **the ruling with regards to Kuffaar seizing the belongings of a Muslim***(that the Kuffaar become owners of it)***, establishing ownership for the trader by purchasing it from them** *(since ownership has been established for the Kuffaar, if any person purchases it from them he will become the owner)***, his transactions of sale, Hibah, setting free** *(will all be correct and whoever purchases it from the trader or the person to whom it is gifted will become owner and if it was a slave and the trader set it free, the slave will become free)***, the right to it in booty and transfer of ownership to the Mujaahid** *(if the*

Muslims gain that same property back as booty it will be distributed in accordance to the laws of booty and ownership will be established for the Mujaahid who gains it) **as well as the impermissibility of the first owner to reclaim it from him** *(once it is given to a Mujaahid as part of the booty, the original owner cannot claim that it is and confiscate it from the Mujaahid)***, including other related rulings, are derived.**

Example Two

وَكَذٰلِكَ قَوْلُهٗ تَعَالىٰ{ اُحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ اِلىٰ نِسَآئِكُمْ} اِلىٰ قَوْلِهِ تَعَالىٰ{ثُمَّ اَتِمُّوْا الصِّيَامَ اِلٰى اللَّيْلِ}فَالْاِمْسَاكُ فِىْ اَوَّلِ الصُّبْحِ يَتَحَقَّقُ مَعَ الْجَنَابَةِ لِاَنَّ مِنْ ضَرُوْرَةِ حِلِّ الْمُبَاشَرَةِ اِلَى الصُّبْحِ اَنْ يَكُوْنَ الْجُزْءُ الْاَوَّلُ مِنَ النَّهَارِ مَعَ وُجُوْدِ الْجَنَابَةِ وَالْاِ مْسَاكُ فِىْ ذٰلِكَ الْجُزْءِ صَوْمٌ اُمِرَ الْعَبْدُ بِاِتْمَامِهِ فَكَانَ هٰذا اِشَارَةً اِلىٰ اَنَّ الْجَنَابَةَ لاَ تُنَافِى الصَّوْمَ

Similarly in the verse,

{ اُحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ اِلىٰ نِسَآئِكُمْ}

"Permission has been granted for you to have sexual relations with your wives...

Until,

{ثُمَّ اَتِمُّوْا الصِّيَامَ اِلٰى اللَّيْلِ}

Then complete the fasts until nightfall. *(Surah Baqarah: 187)*

Abstention *(Fasting, i.e. refraining from eating, drinking and sexual relations)* **began in a state of Janaabat** *(higher impurity)* **because permissibility of indulging in sexual relations** *(which is the Ibaaratun Nas)* **until dawn** *(as permitted in this verse)* **would mean that the first portion of**

the day would be spent in a state of Janaabat *(higher impurity)* **and abstention in this portion** *(is a part)* **of the fast** *(of that day)* **which one has been ordered to keep. Thus this will suggest that** *(being in a state of)* **Janaabat does not nullify the fast.** *(A person has been ordered to fast from sunrise to sunset and when ALLAAH Ta'ala has permitted sexual relations until dawn, which would result in a person being in a state of Janaabat in the first portion, it would mean that being in a state of Janaabat when the fast begins will not invalidate the fast.)*

وَلَزِمَ مِنْ ذٰلِكَ اَنَّ الْمَضْمَضَةَ وَالِاسْتِنْشَاقَ لاَ يُنَافِىْ بَقَاءَ الصَّوْمِ وَ يَتَفَرَّعُ مِنْهُ اَنَّ مَنْ ذَاقَ شَيْئاً بِفَمِهِ لَمْ يَفْسُدْ صَوْمُهُ فَاِنَّهُ لَوْ كَانَ الْمَاءُ مَالِحاً يَجِدُ طُعْمَهُ عِنْدَ الْمَضْمَضَةِ لاَ يَفْسُدُ بِهِ الصَّوْمُ

This *(fasting not being invalid if one is in a state of Janaabat in the first part of the day which is the Ishaaratun Nas)* **necessitates that gargling and rinsing the nose will not affect the continuation of the fast.** *(It is further)* **Derived from this that if one tastes something** *(without swallowing)* **his fast will not break because if one gargles his mouth** *(which does not break the fast)* **and the water is salty such that he can taste** *(its saltiness)* **when gargling, his fast does not break** *(thus we can conclude that tasting something will also not break the fast)*.

وَ عُلِمَ مِنْهُ حُكْمُ الْاِحْتِلاَمِ وَالْاِحْتِجَامِ وَالْاِدِّهَانِ لِاَنَّ الْكِتَابَ لَمَّاسَمَّى الْاِمْسَاكَ اللاَزِمَ بِوَاسِطَةِ الْاِنْتِهَاءِ مِنَ الْاَشْيَاءِ الثَّلاَثَةِ الْمَذْكُوْرَةِ فِىْ اَوَّلِ الصُّبْحِ صَوْماً فَعُلِمَ اَنَّ رُكْنَ الصَّوْمِ يُتِمُّ بِالْاِنْتِهَاءِ عَنِ الْاَشْيَاءِ الثَّلٰثَةِ

We learn from this *(verse, "Then complete the fasts until nightfall")* **the ruling of wet dreams** *(if a person ejaculates while sleeping)*, **cupping** *(drawing blood)*, **and applying oil** *(that all three are permissible while fasting and will not nullify the fast)* **because when abstention from** *(only)* **three things**

(eating, drinking and sexual relations) **during the day has been called fasting** *(in the verse, "Then complete the fasts until nightfall")* **we learn that it** *(fasting)* **is complete by abstention from these three things** *(only)*.

Rulings derived from the above

وَعَلىٰ هٰذا يُخَرَّجُ الْحُكْمُ فِىْ مَسْئَلَةِ التَّبْيِيْتِ فَاِنَّ قَصْدَ الْاِتْيَانِ بِالْمَا مُوْرِ بِهِ اِنَّمَا يَلْزَمُهٗ عِنْدَ تَوَجُّهِ الْاَمْرِ وَالْاَمْرُ اِنَّمَا يَتَوَجَّهُ بَعْدَ الْجُزْءِ الْاَوَّلِ لِقَوْلِهِ تَعَالىٰ ثُمَّ اَتِمُّوْالصِّيَامَ اِلَى اللَّيْلِ

Based upon this *(verse mentioned above)* **the ruling of having the intention for fasting from the night is derived** *(such that according to Imaam Abu Hanifah it is not necessary to have the intention to fast for Ramadaan from the night but can be made before midday)* **because the intention for what one has been ordered to fulfil** *(which is fasting in this case)* **will only become necessary when beginning the act, which only begins** *(in this case)* **in the first portion of the day** *(which is until midday)*.

Definition of Dalaalatun Nas

وَاَمَّا دَلاَلَةُ النَّصِّ فَهُوَ مَا عُلِمَ مِنْهُ عِلَّةُ ا لْحُكْمِ الْمَنْصُوْصِ عَلَيْهِ لُغَةً لاَ اِجْتِهَاداً وَلاَ اِسْتِنْبَاطاً

Dalaalatun Nas is that which is learnt to be the Illat *(principal cause)* **for the ruling, through diction** *(from the meaning of the speech)* **and not Ijtihaad or extraction.**

مِثَالُهٗ فِىْ قَوْلِهِ تَعَالىٰ {وَلاَ تَقُلْ لَهُمَآ اُفٍّ وَّلاَ تَنْهَرْ هُمَا} فَالْعَالِمُ بِاَوْضَاعِ اللُّغَةِ يَفْهَمُ بِأَوَّلِ السِّمَاعِ أَنَّ تَحْرِيْمَ التَّافِيْفِ لِدَفْعِ الأَذَىٰ عَنْهُمَا

An example of this *(Dalaalatun Nas)* **is the verse,**

{وَلاَ تَقُلْ لَهُمَآ أُفٍّ وَّلاَ تَنْهَرْ هُمَا}

"Do not even tell them "Oof!" and do not rebuke them."
(Surah Bani Israa'eel: 23)

As one who is acquainted with Arabic language and its usage will understand immediately on hearing it that the prohibition of saying "Oof!" is so that one will not cause harm to them *(thus causing harm to them will be the principal cause for the prohibition)*.

Ruling for Dalaalatun Nas

وَحُكْمُ هٰذَا النَّوْعِ عُمُوْمُ الْحُكْمِ الْمَنْصُوْصِ عَلَيْهِ لِعُمُوْمِ عِلَّتِهِ وَلِهٰذَا الْمَعْنٰى

The ruling for this category *(Dalaalatun Nas)* **is the ruling will be that wherever the Illat** *(principal cause)* **is found the ruling will apply.**

قُلْنَا بِتَحْرِيْمِ الضَّرْبِ وَالشَّتَمِ وَالاسْتِخْدَامِ عَنِ الأَبِ بِسَبِبِ الاجَارَةِ وَالْحَبْسِ بِسَبِبِ الدَّيْنِ أَوِالْقَتْلِ قِصَاصاً

Therefore *(because the ruling will apply wherever the Illat is found)* **we say that beating, swearing, to hire the service of one's father, imprisoning them for debt** *(if they owe you money)* **or even killing them in Qisaas** *(Shar'ie penalty)* **is Haraam** *(forbidden)*.

Dalaalatun Nas is the same as Ibaaratun Nas

ثُمَّ دَلاَلَةُ النَّصِّ بِمَنْزِلَةِ النَّصِّ حَتّٰى صَحَّ اِثْبَاتُ الْعُقُوْبَةِ بِدَلاَلَةِ النَّصِّ قَالَ اَصْحَابُنَا وَجَبَتِ الْكَفَّارَةُ بِالْوِقَاعِ بِالنَّصِّ وَبِالأَكْلِ وَالشُّرْبِ بِدَلاَلَةِ النَّصِّ

Then Dalaalatun Nas is the same as Ibaaratun Nas *(in its implication/ruling being absolute and having no doubt)* **such that it is permissible to execute punishments** *(penalties)* **based on Dalaalatun Nas. Our scholars** *(of the Hanafi school of thought)* **say** *(with regards to this)* **that Kaffaarah will be Waajib for sexual relations** *(while fasting as prove)* **by Ibaaratun Nas and for eating and drinking by Dalaalatun Nas.**

Rulings derived from the above

وَعَلٰى اِعْتِبَارِ هٰذَا الْمَعْنٰى قِيْلَ يُدَارُالْحُكْمُ عَلٰى تِلْكَ الْعِلَّةِ

Based upon this *(that the implication/ruling of Dalaalatun Nas is absolute and has no doubt)* **it is said that the ruling will be based on** *(the presence or absence)* **that Illat** *(whereby the ruling will apply only when that Illat is found)***.**

وَقَالَ الامَامُ الْقَاضِىْ اَبُوْ زَيْدٍ لَوْأَنَّ قَوْماً يَعُدُّوْنَ التَّافِيْفَ كَرَامَةً لاَ يَحْرُمُ عَلَيْهِمْ تَافِيْفُ الأَبَوَيْنِ

Imaam Qaadhi Abu Zaid said, "If a nation regards the word "Oof!" as a gesture of respect then it will not be Haraam for them to say "Oof!" to their parents *(since the Illat, of causing harm to one's parents is absent, the ruling of Hurmat- prohibition will not apply)***.**

وَكَذٰلِكَ قُلْنَا فِىْ قَوْلِهِ تَعَالٰى {يَا اَيُّهَا الَّذِيْنَ اٰمَنُوْآ اِذَا نُوْدِىَ} الاية وَلَوْ فَرَضْنَا بَيْعًا لاَ يَمْنَعُ الْعَاقِدَيْنِ عَنِ السَّعْيِ اِلَى الْجُمُعَةِ بِأَنْ كَانَا فِىْ سَفِيْنَةٍ تَجْرِىْ اِلَى الْجَامِعِ لاَ يَكْرَهُ البَيْعُ

Similarly *(another example of when the Illat is absent the ruling will not apply)* **is the verse,**

{يَا اَيُّهَا الَّذِيْنَ اٰمَنُوْآ اِذَا نُوْدِىَ}

"O you who have Imaan! When the call *(Adhaan)* **is made for** *(the Jumu'ah)* **salaah on the day of Jumu'ah** *(Friday)***, then hasten towards ALLAAH's remembrance** *(towards the Jumu'ah Salaah to take place in the Masjid)* **and leave trading."** *(Surah Jumu'ah: 9)*

(The Illat for the prohibition of trade is that it hinders hastening towards Salaah) **If we were to assume** *(hypothetically)* **that trade will not prevent the parties** *(buyer and seller)* **from hastening towards Jumu'ah** *(for example)* **by them being on a ship already headed towards the Masjid then it will not be prohibited.**

وَعَلىٰ هٰذَا قُلْنَا اِذَا حَلَفَ لاَ يَضْرِبُ اِمْرَأَتَهُ فَمَدَّ شَعْرَهَا أَوْ عَضَّهَا أَوْ خَنَقَهَا يَحْنَثُ اِذَا كَانَ بِوَجْهِ الايْلاَمِ وَلَوْ وُجِدَ صُوْرَةُ الضَّرْبِ وَمَدُّالشَّعْرِ عِنْدَ الْمُلاَعَبَةِ دُوْنَ الايْلاَمِ لاَ يَحْنَثُ

Similarly *(another example of when the Illat is absent the ruling will not apply)* **is if a person takes an oath that he will not hit his wife** *(which means that he will not inflict harm to her)* **and then pulls her hair, bites her or chocks her such that it causes her pain then his oath will break** *(even though he might not have hit her)***.** *(However)* **If he strikes her** *(gently)* **or pulls her hair while playing with her, without harming her, then his oath will not break** *(even though he appears to have struck her)***.**

وَمَنْ حَلَفَ لاَ يَضْرِبُ فُلاَنًا فَضَرَبَهُ بَعْدَ مَوْتِهِ لاَ يَحْنَثُ لانْعِدَامِ مَعْنَى الضَّرْبِ وَهُوَ الايْلاَمُ

If a person takes an oath that he will not hit a certain person *(which means that he will not harm him)* **and then hits him after his death, his oath will not break as the meaning of hitting, which is to cause pain, is not found here** *(as the deceased person cannot feel pain)***.**

وَكَذَا لَوْ حَلَفَ لاَ يَتَكَلَّمُ فُلاَنًا فَكَلَّمهٗ بَعْدَ مَوْتِهِ لاَ يَحْنَثُ لِعَدْمِ الافْهَامِ

Similarly if a person takes an oath that he will not talk to a certain person and then does so after his death, his oath will not break as the deceased person cannot understand him.

وَبِاعْتِبَارِ هٰذَا الْمَعْنٰى يُقَالُ اِذَا حَلَفَ لاَ يَأكُلُ لَحْماً فَأَكَلَ لَحْمَ السَّمَكِ اَوِالْجَرَادِ لَا يحْنَثُ وَلَوْ اَكَلَ لَحْمَ الْخِنْزِيْرِ اَوِالانْسَانِ يَحْنَثُ لانَّ الْعَالِمَ بِاللُّغَاتِ يَعْلَمُ بِاَوَّلِ السِّمَاع اَنَّ الْحَامِلَ عَلٰى هٰذَا الْيَمِيْنِ اِنَّمَا هُوَ الاحْتِرَازُ عَنْ تَنَاوُلِ الدَّمَوِيَّاتِ فَيُدَارُ الْحُكْمُ عَلٰى ذٰلِكَ

Based upon this *(that the ruling will apply only when the Illat is found)* **it has been said that if a person takes an oath that he will not eat meat and then eats fish or locust, his oath will not break but if he eats pork or human flesh, his oath will break. The reason for this is that one acquainted with the Arabic language and its usage immediately on hearing it will understand that he is taking an oath that he will not eat meat which has been created from** *(or made from)* **blood, which would mean that he is abstaining from all types of flesh and the ruling will be based on it** *(such that his oath will only break if he consumes meat created from blood, which is not present in fish or locusts)***.**

Definition of Iqtidha'un Nas

وَاَمَّاالْمُقْتَضٰى فَهُوَ زِيَادَةٌ عَلَى النَّصِّ لاَ يَتَحَقَّقُ مَعْنَى النَّصِّ اِلاَّ بِهِ كَانَّ النَّصَّ اِقْتَضَاهُ لِيَصِحَّ فِىْ نَفْسِهِ مَعْنَاهُ

Iqtidha'un Nas is an addition to the speech *(a meaning beyond What is actually said)* **without which the meaning of the speech will not be correct** *(the implication of the speech cannot be applied without it)***, that is to say the speech requires it in order for its meaning to be correct.**

Example of Iqtidha'un Nas

مِثَالُهٗ فِى الشَّرْعِيَّاتِ قَوْلُهٗ اَنْتِ طَالِقٌ فَاِنَّ هٰذَا نَعْتُ الْمَرْأَةِ اِلاَّ اَنَّ النَّعْتَ يَقْتَضِى الْمَصْدَرَ فَكَانَ الْمَصْدَرُ مَوْجُوْدٌ بِطَرِيْقِ الاقْتِضَاءِ

An example of this *(Dalaalatun Nas)* **in** *(the laws of)* **Shari'ah is the term, "You are divorced". This** *(being divorced)* **is a characteristic** *(Sifat, which is a derivative of a verb)* **of the woman, however in order for it** *(divorced)* **to be the characteristic** *(Sifat, which is a derivative of a verb)* **the Masdar** *(root word, or verb in this case, from which words are derived)* **has to be present[1]. In other words it can be said that the meaning of the Masdar is present because it is required** *(for the meaning of the speech to be correct)***.**

وَاِذَا قَالَ اَعْتِقْ عَبْدُكَ عَنِّىْ بِاَلْفِ دِرْهَمٍ فَقَالَ اَعْتَقْتُ يَقَعُ الْعِتْقُ عَنِ الأَمْرِ فَيَجِبُ عَلَيْهِ الأَلْفُ وَلَوْ كَانَ الأَمْرُ نَوَىٰ بِهِ الْكَفَّارَةَ يَقَعُ عَمَّا نَوَىٰ وَذَٰلِكَ لاَنَّ قَوْلَهٗ اَعْتِقْهُ عَنِّىْ بِاَلْفِ دِرْهَمٍ يَقْتَضِىْ مَعْنَى قَوْلِهِ بِعْهُ عَنِّىْ بِاَلْفِ ثُمَّ كُنْ وَكِيْلِىْ بِالاعْتَاقِ فَاعْتِقْهُ عَنِّىْ فَيَثْبُتُ الْبَيْعُ بِطَرِيْقِ الاقْتِضَاءِ فَيَثْبُتُ الْقُبُوْلُ كَذٰلِكَ لاَنَّهٗ رُكْنٌ فِىْ بَابِ الْبَيْعِ

[1] If a sifat (quality, attribute or characteristic) is ascribed to a person it will necessitate that the person carry out the action or in other words was the doer of the verb, e.g. if a person is called a helper. It would mean that he carried out the action of helping. Similarly in this instance when the woman has been called divorced, it would mean that the action of being divorce was carried out on her.

(The second example of Dalaalatun Nas is) **If a person tells another, "Set your slave free on my behalf in lieu of one thousand dirhams" and the owner then says that he set the slave free, the act of setting free will be attributed to the one who gave the order and a thousand Dirhams will become Waajib on him** *(to give to the owner of the slave)*. **If the person who gave the order had the intention of Kaffaarah** *(that he is setting this slave free in payment for his Kaffaarah)* **then it will be in accordance with his intention** *(and his Kaffaarah will be fulfilled).* **The reason for this is that saying, "Set your slave free on my behalf in lieu of one thousand dirhams" necessitates the meaning of "Sell this slave to me for one thousand dirhams ant then be my representative** *(Wakeel)* **in setting him free and set him free on my behalf.". Thus a sale** *(transaction of sale between the two)* **has been established by Iqtidha'un Nas** *(that in order for the meaning of the speech to be correct, a sale transaction is required)* **and acceptance** *(of the sale)* **will also be established in a similar manner** *(by Dalaalatun Nas)*.

وَلِهٰذَا قَالَ اَبُوْ يُوْسُفَ اِذَا قَالَ اَعْتِقْ عَبْدَكَ عَنِّىْ بِغَيْرِ شَيءٍ فَقَالَ اَعْتَقْتُ يَقَعُ الْعِتْقُ عَنِ الامِرِ وَيَكُوْنُ هٰذَا مُقْتَضِيًا لِلْهِبَةِ وَالتَّوْكِيْلِ وَلاَ يَحْتَاجُ فِيْهِ اِلَى الْقَبْضِ لانَّهٗ بِمَنْزِلَةِ الْقَبُوْلِ فِىْ بَابِ الْبَيْعِ

Because of this *(that a sale transaction has been established in the above example by Dalaalatun Nas)* **Imaam Abu Yusuf says that if a person says to another, "Set your slave free on my behalf in exchange for nothing" and he** *(the owner)* **then says, "I set him free" the act of setting free will be ascribed to the one who gave the order and Hibah** *(transferring ownership to the other by gifting it to him)* **and 'Towkeel'***(appointing another as his representative to act on his behalf)***will be established Iqtidha'un Nas and taking possession will not be necessary** *(for the one who gave the order)* **as it** *(taking possession)* **is the same as acceptance in**

the example of sale *(mentioned above where acceptance was established also through Dalaalatun Nas)***.**

وَلٰكِنَّا نَقُوْلُ اَلْقُبُوْلُ رُكْنٌ فِىْ بَابِ الْبَيْعِ فَاِذَا اَثْبَتْنَا الْبَيْعَ اِقْتِضَاءً اَثْبَتْنَا الْقُبُوْلَ ضَرُوْرَةً بِخِلاَفِ الْقَبْضِ فِىْ بَابِ الْهِبَةِ فَاِنَّهُ لَيْسَ بِرُكْنٍ فِى الْهِبَةِ لِيَكُوْنَ الْحُكْمُ بِالْهِبَةِ بِطَرِيْقِ الاَقْتِضَاءِ حُكْماً بِالْقَبْضِ

However *(in disagreement to this ruling of Imaam Abu Yusuf)* **we say** *(i.e. Imaam Abu Hanifah and Imaam Muhammed)* **that acceptance is a Rukan** *(fundamental element)* **of a sale thus if a sale has been established** *(to have occurred)* **by Iqtidha'un Nas then it would dictate that acceptance also definitely occurred** *(as a sale is only complete with a proposal of sale and acceptance of the offer, thus when we say a sale took place it would naturally mean that a proposal and acceptance occurred)* **as opposed to taking possession in Hibah as it** *(taking possession)* **is not a Rukan** *(but rather a condition for the transfer of ownership)* **such that we can say that when Hibah is proven by Iqtidha'un Nas, taking possession also definitely occurred** *(as the act of Hibah can take place, without the other taking possession, such that ownership will only be transferred once the other takes possession of the item, even though it has already been gifted to him. This is contrary to a sale, as a sale is only complete and called a sale once both a proposal and acceptance takes place)***.**

Ruling of Iqtidha'un Nas

وَحُكْمُ الْمُقْتَضٰى اَنَّهٗ يَثْبُتُ بِطَرِيْقِ الضَّرُوْرَةِ فَيُقَدَّرُ بِقَدْرِ الضَّرُوْرَة

The ruling of Iqtidha'un Nas is that it is established out of necessity and will therefore be restricted to its necessity *(such that only that amount of it will be applied which can fulfill the requirement of Iqtidha'un Nas)***.**

Example of Iqtidha'un Nas

وَلِهٰذَا قُلْنَا اِذَا قَالَ اَنْتِ طَالِقٌ وَنَوٰى بِهِ الثَّلٰثَ لاَ يَصِحُّ لانَّ الطَّلاَقَ يُقَدَّرُ مَذْكُوْراً بِطَرِيْقِ الاقْتِضَاءِ فَيُقَدَّرُ بِقَدْرِ الضَّرُوْرَةِ وَالضَّرُوْرَةُ تَرْتَفِعُ بِالْوَاحْدِ فَيُقَدَّرُ مَذْكُوْراً فِىْ حَقِّ الْوَاحِدِ

As a result of this *(that Iqtidha'un Nas is restricted to its necessity)* **we say that if a person tells his wife "You are divorced" with the intention of three Talaaq, it will not be correct** *(and only one Talaaq will apply)*. **The reason for this is that Talaaq has been regarded to have been issued by Iqtidha'un Nas** *(as was discussed that ascribing a sifat necessitates the occurrence of the action; being divorced necessitates that a divorce was issued)* **and will therefore be restricted to necessity and the necessity is fulfilled with one thus it will be established that only one Talaaq was issued.**

Rulings derived from the above

وَ عَلٰى هٰذَا يُخَرَّجُ الْحُكْمُ فِىْ قَوْلِهِ اِنْ اَكَلْتُ وَ نَوٰى بِهِ طَعَامًا دُوْنَ طَعَامٍ لَا يَصِحُّ لِاَنَّ الْاَكْلَ يَقْتَضِىْ طَعَامًا فَكَانَ ذٰلِكَ ثَابِتًا بِطَرِيْقِ الْاِقْتِضَاءِ فَيُقَدَّرُ بِقَدْرِ الضَّرُوْرَةِ وَ الضَّرُوْرَةُ تَرْتَفِعُ بِالْفَرْدِ الْمُطْلَقِ وَ لاَ تَخْصِيْصَ فِى الْفَرْدِ الْمُطْلَقِ لِاَنَّ التَّخْصِيْصَ يَعْتَمِدُ الْعُمُوْمَ

As a result of this *(that Iqtidha'un Nas is restricted to necessity)* **the ruling is derived for the statement** *(if a person takes an oath saying)*, **"If I eat...***(Then my wife is divorced, slave set free, or any other condition)***" whereby he makes the intention for one type of food** *(the intention that if I eat this specific type of food then only will the condition be fulfilled)* **and excludes others, it will not be correct** *(and his oath will break with the consumption of any type of food)*. **The reason**

for this *(why the oath breaks even though he might have been referring to a specific food)* **is that eating necessitates food, thus it** *(consumption of food)* **has been established by Iqtidha'un Nas which will be restricted to necessity and the necessity will only be fulfilled by 'Fard Mutlaq'** *(an unrestricted clause)***. 'Fard Mutlaq' cannot be specified** *(have its implication restricted)* **as 'Takhsees'** *(to restrict)* **requires Umoom** *(generality, which means it can only occur where an item is Aam and Iqtidha'un Nas is not Aam)***.**

وَلَوْ قَالَ بَعْدَ الدُّخُوْلِ اِعْتَدِّىْ وَنَوٰى بِهِ الطَّلاَقَ فَيَقَعُ الطَّلاَقُ اِقْتِضَاءً لاَنَّ الاعْتِدَادَ يَقْتَضِىْ وُجُوْدَ الطَّلاَقِ فَيُقَدَّرُ الطَّلاَقُ مَوْجُوْداً ضَرُوْرَةً وَلِهٰذَا كَانَ الْوَاقِعُ بِهِ رَجْعِيًّا لاَنَّ صِفَةَ الْبَيْنُوْنَةِ زَائِدَةٌ عَلٰى قَدْرِ الضَّرُوْرَةِ فَلاَ يَثْبُتُ بِطَرِيْقِ الاقْتِضَاءِ وَلاَ يَقَعُ اِلاَّ وَاحِدٌ لِمَا ذَكَرْنَا

If a person tells his wife after consummating the marriage, "Start your Iddah *(period of waiting after Talaaq)***" with the intention of Talaaq the Talaaq will be applied through Iqtidha'un Nas. The reason for this is that Iddah requires the issuing of a Talaaq, thus it will be established that a Talaaq was issued** *(because of which he is instructing her to start her Iddah)* **according to necessity** *(will be restricted to only that amount which will fulfill the requirement of Iqtidha'un Nas)***, which is possible through a Raj'ie** *(revocable)* **Talaaq. The reason for this** *(why it will be a Talaaq Raj'ie)* **is that Talaaq Baa'inah** *(irrevocable Talaaq)* **exceeds the necessity and therefore cannot be established through Iqtidha'un Nas. Thus only one Talaaq** *(Raj'ie)* **will apply, as we have explained.**

Lesson on Amr

Definition of Amr

Paste

فصل فى الامر

اَلْأمْرُ فِى اللُّغَةِ قَوْلُ الْقَائِلِ لِغَيْرِه ’’اِفْعَلْ‘‘ وَفِى الشَّرْعِ تَصَرُّفُ اِلْزَامِ الْفِعْلِ عَلَى الْغَيْرِ

The literal meaning of Amr is when a person orders another to do something using the words ’افعل’- Do *(this)***! In Shari’ah** *(it means)***, making something** *(an act)* **compulsory on another.**

وَذَكَرَ بَعْضُ الْأَئِمَّةِ أَنَّ الْمُرَادَ بِالْأَمْرِ يَخْتَصُّ بِهٰذِهِ الصِّيْغَةِ، وَاسْتَحَالَ أَنْ يَّكُوْنَ مَعْنَاهُ أَنَّ حَقِيْقَةَ الْأَمْرِ يَخْتَصُّ بِهٰذِهِ الصِّيْغَةِ فَاِنَّ اللهَ تَعَالٰى مُتَكَلِّمٌ فِى الْأزَلِ عِنْدَنَا، وَ كَلاَمُه أَمْرٌوَنَهْىٌ وَ اِخْبَارٌ وَ اِسْتِخْبَارٌ، وَ اِسْتَحَالَ وُجُوْدُ هٰذِهِ الصِّيْغَةِ فِى الْأزَلِ، وَاِسْتَحَالَ أَيْضاً أَنْ يَّكُوْنَ مَعْنَاهُ أَنَّ الْمُرَادَ بِالْأَمْرِ لِلْامِرِ يَخْتَصُّ بِهٰذِهِ الصِّيْغَةِ فَاِنَّ الْمُرَادَ لِلشَّارِعِ بِالْأَمْرِ وُجُوْبُ الْفِعْلِ عَلَى الْعَبْدِ وَهُوَ مَعْنَى الْاِبْتِلَاءِ عِنْدَنَا، وَقَدْ ثَبَتَ الْوُجُوْبُ بِدُوْنِ هٰذِهِ الصِّيْغَةِ، أَلَيْسَ أَنَّه وَجَبَ الْاِيْمَانُ عَلٰى مَنْ لَّمْ تَبْلُغْهُ الدَّعْوَةُ بِدُوْنِ وُرُوْدِ السَّمْعِ؟قَالَ اَبُوْ حَنِيْفَةَ لَوْ لَمْ يَبْعَثِ اللهُ رَسُوَلاً لَوَجَبَ عَلَى الْعُقَلَاءِ مَعْرِفَتُه بِعُقُوْلِهِمْ، فَيُحْمَلُ ذٰلِكَ عَلٰى اَنَّ الْمُرَادَ بِالْاَمْرِ يَخْتَصُّ بِهٰذِهِ الصِّيْغَةِ فِىْ حَقِّ الْعَبْدِ فِى الشَّرْعِيَّاتِ حَتّٰى لَا يَكُوْنَ فِعْلُ الرَّسُوْلِ بِمَنْزِلَةِ قَوْلِه ’’اِفْعَلُوْا‘‘، وَلاَ يَلْزَمُ اِعْتِقَادُ الْوُجُوْبِ بِه، وَالْمُتَابَعَةُ فِىْ اَفْعَالِه عَلَيْه السَّلَامِ اِنَّمَا تَجِبُ عِنْدَ الْمُوَاظَبَةِ وَاِنْتِفَاءَ دَلِيْلِ الْاِخْتِصَاصِ

Some Aimah have mentioned that Amr is restricted to this expression (افعل).*()***It is impossible that they could have implied that the reality of Amr is restricted to this expression only because according to us ALLAAH Ta’ala is the Speaker since eternity and his speech comprises of Amr**

(ordering), **Nahee** *(prohibiting)*, **Ikhbaar** *(informing)*, **Istikhbaar** *(questioning)* **and it is impossible that this expression could have existed since eternity** *(as any expression or term is momentary because of it comprising of sound, letters and words, whereas ALLAAH's speech does not comprise of these and is therefore eternal)*. **At the same time it is impossible that this** *(the statement of some Aimah that Amr is restricted to this expression only)* **means that the objective of the one giving the order** *(which is to make an act Waajib on another)* **can only be attained with this expression because the purpose of Amr from the Shar'ie***(the one who stipulates the laws of Shari'ah)* **is to make an act Waajib on the servant, which gives the meaning of 'Ibti'laa'** *(to put to trial)*, **and Wujoob can be established without this expression.** *(For example)* **Is Imaan not Waajib on those whom the message of Islaam has not reached? Imaam Abu Hanifah says, "Had ALLAAH Ta'ala not sent any Nabi then** *(too)* **it would be compulsory upon the intellectuals to use their intellect to recognise ALLAAH Ta'ala. Thus the statement of the Aimah** *(mentioned above)* **will mean that the Ahkaam of Shari'ah with regards to** *(ALLAAH's)* **servants is restricted to this expression such that the actions of Rasulullaah will not have the same status as the expression of Rasulullaah 'افعلوا'- You all Do!** *(this)* **and it will not be necessary to regard the action of Rasulullaah as Waajib** *(in the same manner as his order will be regarded)*. **Following the actions of Rasulullaah will only be Waajib when it is proven that Rasulullaah habitually performed that act or** *(it is proven)* **that it was not specific to Rasulullaah only.**

Lesson on Amr Mutlaq

فصل

اِخْتَلَفَ النَّاسُ فِي الْاَمْرِ الْمُطْلَقِ اَىْ اَلْمُجَرَّدِ عَنِ الْقَرِيْنَةِ الدَّالَّةِ عَلَى اللُّزُوْمِ وَ عَدْمِ اللُّزُوْمِ نَحْوُ قَوْلِه تَعَالٰى {وَاِذَا قُرِءَ الْقُرْآنُ فَاسْتَمِعُوْا لَى وَاَنْصِتُوْا لَعَلَّكُمْ تُرْحَمُوْنَ} وَ قَوْلِه تَعَالٰى {وَلاَ تَقْرَبَا هٰذِهِ الشَّجَرَةَ فَتَكُوْنَا مِنَ الظَّالِمِيْنَ} وَالصَّحِيْحُ مِنَ الْمَذْهَبِ اَنَّ مَوْجَبَهُ الْوُجُوْبُ اِلَّا اِذَا قَامَ الدَّلِيْلُ عَلٰى خِلَافِه لِأَنَّ تَرْكَ الاَمْرِ مَعْصِيَةٌ كَمَا اَنَّ الْاِيْتِمَارَ طَاعَةٌ، قَالَ الْحَمَاسِى:

اَطَعْتِ لِامِرِيْكِ بِصَرْمِ حَبْلِىْ　　مُرِيْهِمْ فِىْ اَحِبَّتِهِمْ بِذَاك

فَهُمْ اِنْ طَاوَعُوْكِ فَطَاوِعِيْهِمْ　　وَاِنْ عَاصَوْكِ فَاعْصِىْ مَنْ عَصَاك

وَالْعِصْيَانُ فِيْمَا يَرْجِعُ اِلٰى حَقِّ الشَّرْعِ سَبَبٌ لِلْعِقَابِ

The scholars have differed regarding Amr Mutlaq; i.e. *(such an Amr which is)* **free from any indication whether it is for compulsion or not for compulsion** *(this means that there is a difference of opinion regarding the expression of Amr which does not indicate whether it is Waajib or not Waajib)***. For example, the verses, "When the Quraan is recited, then <u>listen</u> attentively to it** *(stop talking)* **and <u>remain silent</u> so that mercy may be shown to you" and "But <u>do not approach</u> this tree, for then** *(if you eat from it)* **you will be of the wrong-doers"***(there is nothing in these verses which indicate whether the order given in these verses are for Wujoob or not)***. The Saheeh** *(correct and authentic)* **view is that it** *(Amr Mutlaq)* **is for Wujoob except if proof is established against it** *(if there is proof that Wujoob is not implied then the act will not be considered Waajib)* **because discarding Amr is disobedience and acting in accordance to it is obedience. Allaamah Humaasi said,**

"In severing relations with me you have obeyed those who order you.

You too order them to do the same to their beloveds.

If they obey you *(and sever ties with those they love)***, then obey them** *(and sever relations with me)***.**

If they disobey you *(and do not sever relations with those they love)***, then disobey those who disobey you** *(and maintain relations with me)***.”**

Disobedience with regards to matters of Shari’ah is a cause for punishment.

وَ تَحْقِيْقُه اَنَّ لُزُوْمَ الْاِيْتِمَار اِنَّمَا يَكُوْنُ بِقَدْرِ وِلَايَةِ الْامِرِ عَلَى الْمُخَاطَبِ، وَلِهٰذَا اِذَا وَجَّهْتَ صِيْغَةَ الْاَمْرِ اِلٰى مَنْ لاَ يَلْزَمُه طَاعَتُكَ اَصْلاً لاَ يَكُوْنُ ذٰلِكَ مُوْجِباً لِلْاِيْتِمَارِ، وَ اِذَا وَجَّهْتَهَا اِلٰى مَنْ يَلْزَمُه طَاعَتُكَ مِنَ الْعَبِيْدِ لَزِمَهُ الْاِيْتِمَارُ لاَ مُحَالَةً حَتّٰى لَوْ تَرَكَه اِخْتِيَارًا يَسْتَحِقُّ الْعِقَابَ عُرْفاً وَ شَرْعاًفَعَلٰى هٰذَا عَرَفْنَا اَنَّ لُزُوْمَ الْاِ يْتِمَارِ بِقَدْرِ وِلاَيَةِ الْأٰمِرِ، اِذَا ثَبَتَ هٰذَا فَنَقُوْلُ اِنَّ لِلّٰهِ مِلْكاً كَامِلاً فِىْ كُلِّ جُزْءٍ مِنْ اَجْزَاءِ الْعَالَمِ وَلَهُ التَّصَرُّفُ كَيْفَ مَا شَاءَ وَاَرَادَ، وَاِذَا ثَبَتَ اَنَّ مَنْ لَهُ الْمِلْكُ الْقَاصِرُ فِى الْعَبْدِ كَانَ تَرْكَ الْاِيْتِمَارِ سَبَبًا لِلْعِقَابِ فَمَا ظَنُّكَ فِىْ تَرْكِ اَمْرِ مَنْ اَوْجَدَكَ مِنَ الْعَدْمِ وَاَدَرَّ عَلَيْكَ شَآبِيْبَ النِّعَمِ

The rationale behind this *(that disregarding Amr is disobedience)* **is that compulsion to perform** *(an Amr)* **is based upon the authority one has over the addressee** *(the one to whom the Amr is directed)***. As a result of this** *(that compulsion is based upon the authority one has over the addressee)* **if the expression of Amr** *(an order)* **is directed to a person upon whom it is not compulsory to obey you then it will not be Waajib** *(for him)* **to carry it** *(the ordered task)* **out and if it is directed to a person upon whom it is compulsory to obey you then it will be compulsory for him to carry it out without any doubt. If he were to disregard it intentionally then he will be deserving of punishment logically and according to Shari’ah. According to this we learn that the level of compulsion will be based upon the authority of the one issuing the order** *(over those being*

*ordered, such that if he has authority over them then it will be compulsory for them to obey it and if he has no authority over them then it will not be compulsory for them to obey it)***. Once this has been established** *(that the level of compulsion will be based upon the authority of the one issuing the order)* **we say that ALLAAH Ta'ala is Supreme Master of every inch of the universe and can do as He so pleases and intends** *(thus ALLAAH Ta'ala has authority over everything and his orders are compulsory on His creation)***. When it has been established that disregarding an order of one who has a slight authority over a person** *(by being his master and the latter being his slave)* **is deserving of punishment, what is your opinion about disregarding the order of One who brought you into existence from nothing and showered His bounties upon you** *(how much more incumbent will ALLAAH's order be)***?**

Lesson on Taqraar in Amr

فصل اَلْاَمْرُ بِالْفِعْلِ لاَ يَقْتَضِى التَّكْرَارَ

This lesson discusses that Amr-bil-Fi'l *(ordering a specific act)* **does not necessitate repetition** *(such that carry out once will fulfil the requisite of the order)***.**

وَلِهٰذَا قُلْنَا لَوْ قَالَ ''طَلِّقْ اِمْرَاَتِىْ'' فَطَلَّقَهَا الْوَكِيْلُ ثُمَّ تَزَوَّجَهَا الْمَوَكِّلُ لَيْسَ لِلْوَكِيْلِ اَنْ يُّطَلِّقَهَا بِالْاَمْرِ الْاَوَّلِ ثَانِياً

As a result of this *(that Amr does not necessitate repetition)* **we say that if a person orders another saying, "Divorce my wife** *(on my behalf)***" and the Wakeel** *(appointee)* **divorces**

her, and thereafter the Muwakkil *(the appointer)* **then remarries her, the Wakeel will not have the right to divorce her a second time with the first Amr** *(when he divorced her the first time he fulfilled the Amr and will not have the right to continually issue divorces)***.**

وَلَوْ قَالَ زَوِّجْنِىْ اِمْرَأَةً لاَ يَتَنَاوَلُ هٰذَا تَزْوِيْجًا مَرَّةً بَعْدَ اُخْرٰى، وَلَوْ قَالَ لِعَبْدِه ''تَزَوَّجْ'' لاَ يَتَنَاوَلُ ذٰلِكَ اِلاَّ مَرَّةً وَاحِدَةً

If a person orders another saying, "Marry me to a woman" then this will give him the right to perform his marriage again and again. If a person orders his slave, "Get married!" then this will permit him to get married only once *(and he will not be allowed to marry again)***.**

لِاَنَّ الْاَمْرَ بِالْفِعْلِ طَلَبُ تَحْقِيْقِ الْفِعْلِ عَلٰى سَبِيْلِ الْاِخْتِصَارِ فَاِنَّ قَوْلَه اِضْرِبْ مُخْتَصَرٌ مِنْ قَوْلِه اِفْعَلْ فِعْلَ الضَّرْبِ وَالْمُخْتَصَرُ مِنَ الْكَلاَمِ وَالْمُطَوَّلُ سَوَاءٌ فِى الْحُكْمِ ثُمَّ الْاَمْرُ بِالضَّرْبِ اَمْرٌ بِجِنْسِ تَصَرُّف مَعْلُوْمٍ وَ حُكْمُ اِسْمِ الْجِنْسِ اَنْ يَتَنَاوَلَ الْاَدْنٰى عِنْدَ الْاِطْلاَقِ وَ يَحْتَمِلَ كُلَّ الْجِنْسِ

The reason for this *(why Amr does not necessitate repetition)* **is that Amr calls for that action in a concise manner** *(meaning it is an abbreviation of a lengthy statement)* **as 'اِضْرِبْ'- You Hit! is short for 'Perform the action of hitting', and the concise and extended form are both the same in its ruling. Then** *(thus the above order to hit would imply that one must strike once because)* **the order to hit is an order to carry out a type of action** *(in this case hitting)* **in a known manner and when a known type is ordered then it will refer to the bare minimum when Mutlaq** *(with no clauses or restrictions)* **or the maximum** *(if he has the intention for it, either one can be implied and there is no in-between)***.**

Rulings deduced from the above

وَ عَلٰى هٰذَا قُلْنَا اِذَا حَلَفَ لاَ يَشْرَبُ الْمَاءَ يَحْنَثُ بِشُرْبِ اَدْنٰى قَطْرَةٍ مِنْهُ وَلَوْ نَوٰى بِهِ جَمِيْعَ مِيَاهِ الْعَالَمِ صَحَّتْ نِيَّتُه

As a result of this *(that Amr-Mutlaq will refer to either the minimum or maximum)* **we say if a person takes an oath that he will not drink water, then his oath will break even if he drinks a drop.** *(However)* **If he has the intention for the water of the entire world** *(meaning he takes an oath that he will not drink all the water of the entire world)* **then his intention will be correct** *(because Amr-Mutlaq can refer to the minimum or maximum, and in this case his oath will only break if he drinks all the water of the entire world and not if he drinks a drop)***.**

وَلِهٰذَا قُلْنَا اِذَاقَالَ لَهَا طَلِّقِىْ نَفْسَكِ فَقَالَتْ طَلَّقْتُ يَقَعُ الْوَاحِدَةُ وَلَوْ نَوَى الثَّلٰثَ صَحَّتْ نِيَّتُه

As a result of this *(that Amr-Mutlaq will refer to either the minimum or maximum)* **we say that if a person orders his wife to divorce herself and she then says, "I divorced myself" then one Talaaq will apply but if he had the intention for three then his intention will be correct** *(and three will apply because Amr-Mutlaq will refer to either the minimum or maximum, thus it can refer to either one Talaaq or three)***.**

وَكَذٰلِكَ لَوْ قَالَ لِاٰخَرَ طَلِّقْهَا يَتَنَاوَلُ الْوَاحِدَةَ عِنْدَ الْاِطْلَاقِ وَلَوْ نَوَى الثَّلٰثَ صَحَّتْ نِيَّتُه وَلَوْ نَوَى الثِّنْتَيْنِ لاَ يَصِحُّ اِلَّا اِذَا كَانَتِ الْمَنْكُوْحَةُ اَمَةً فَاِنَّ نِيَّةَ الثِّنْتَيْنِ فِىْ حَقِّهَا نِيَّةٌ بِكُلِّ الْجِنْسِ

Similarly *(Amr-Mutlaq can refer to either the minimum or maximum)***if a person orders another to divorce his wife,**

then this will refer to one when Amr is Mutlaq and if he had the intention for three then his intention will be correct *(and three Talaaq will apply)*. *(However)* **If he had the intention for two then it will not be correct** *(and only one will apply)* **except if his wife was a female slave because the intention of two in her favour is the intention of the maximum.**

وَلَوْ قَالَ لِعَبْدِه تَزَوَّجْ يَقَعُ عَلٰى تَزَوُّجِ اِمْرَاَةٍ وَاحِدَةٍ وَلَوْ نَوَى الثِّنْتَيْنِ صَحَّتْ نِيَّتُه لِاَنَّ ذٰلِكَ كُلُّ الْجِنْسِ فِىْ حَقِّ الْعَبْدِ

If a person tells his slave, "Get married!" then it will permit him to marry one woman but if he had the intention of *(permitting him to marry)* **two women then his intention will be correct** *(and he will be permitted to marry two women)* **as two is the maximum** *(amount wives he can take at one time)* **for a slave.**

A reply to an objection to this principle

وَلَا يَتَاَتّٰى عَلٰى هٰذَا فَصْلُ تَكْرَارِ الْعِبَادَاتِ فَاِنَّ ذٰلِكَ لَمْ يَثْبُتْ بِالْاَمْرِ بَلْ بِتَكْرَارِ اَسْبَابِهَا الَّتِىْ يَثْبُتُ بِهَا الْوُجُوْبُ وَالْاَمْرُ لِطَلَبِ اَدَاءِ مَا وَجَبَ فِى الذِّمَّةِ بِسَبَبٍ سَابِقٍ لاَ لِاِثْبَاتِ اَصْلِ الْوُجُوْبِ وَهٰذَا بِمَنْزِلَةِ قَوْلِ الرَّجُلِ اَدِّ ثَمَنَ الْمَبِيْعِ وَاَدِّ نَفَقَةَ الزَّوْجَةِ فَاِذَا وَجَبَتِ الْعِبَادَةُ بِسَبَبِهَا فَتَوَجَّهَ الْاَمْرُ لِاَدَاءِ مَا وَجَبَ مِنْهَا عَلَيْهِ ثُمَّ الْاَمْرُ لَمَّا كَانَ يَتَنَاوَلُ الْجِنْسَ يَتَنَاوَلُ جِنْسَ مَا وَجَبَ عَلَيْهِ

Based upon this principle (*that Amr does not necessitate repetition)* **there will no objection to repetition in Ibaadaat** *(whereby one can say that since there is no repetition in Amr it is not necessary to perform acts of Ibaadaat, such as Salaah, etc, repeatedly but merely performing them once will suffice)* **because they are not established** *(made Waajib repeatedly)* **by Amr** *(necessitating repetition)* **but rather** *(they become*

Waajib repeatedly) **because of repetition of the Asbaab** *(the principal cause)* **which causes it to become Waajib. The Amr seeks to make Waajib performance of that, which is already incumbent on a person and not to establish compulsion in essence** *(the Amr does not make the act Waajib but merely orders one to perform that which is Waajib on that person at that particular time)***. This** *(making performance of something incumbent, which was already Waajib on a person before this)* **is similar to a person telling another, "Pay the price of the goods"** *(the Amr to pay the price in actual fact is ordering one to pay that amount that has become Waajib on him as a result of the transaction which he contracted previously and the Amr to pay itself did not make it Waajib)***or "Pay maintenance to your wife"** *(the Amr to pay the price in actual fact is ordering one to pay that amount that has become Waajib on him as a result of the transaction which he contracted previously and the Amr to pay itself did not make it Waajib)***. Thus when Ibaadaat become Waajib because of their Asbaab and the Amr will only seek performance of that which is already Waajib upon him. Then when Amr refers to a specific class** *(category)* **then it will refer to that** *(entire)* **class which is Waajib upon him** *(whenever Amr is used it will refer all that is Waajib upon him, for example the order to perform Salaah is an order to perform all the Salaah which is Waajib on a person in his entire life)***.**

وَ مِثَالُه مَا يُقَالُ اِنَّ الْوَاجِبَ فِىْ وَقْتِ الظُّهْرِ هُوَ الظُّهْرُ فَتَوَجَّهَ الْاَمْرُ لِاَدَاءِ ذٰلِكَ الْوَاجِبِ ثُمَّ اِذَا تَكَرَّرَ الْوَقْتُ تَكَرَّرَ الْوَاجِبُ فَتَنَاوَلَ الْاَمْرُ ذٰلِكَ الْوَاجِبَ الآخَرَ ضَرُوْرَةَ تَنَاوُلِهِ كُلَّ الْجِنْسِ الْوَاجِبِ عَلَيْهِ صَوْماً كَانَ اَوْ صَلٰوةً فَكَانَ تَكْرَارُ الْعِبَادَةِ الْمُتَكَرَّرَةِ بِهٰذَا الطَّرِيْقِ لاَ بِطَرِيْقِ اَنَّ الاَمْرَ يَقْتَضِى التَّكْرَارَ

An example of this *(that Amr will refer to the entire class which is Waajib on a person)* **is what is said that** *(all the)* **Zuhr Salaah** *(incumbent on a person in his life)* **is what is**

Waajib in the time of Zuhr, thus the Amr will be directed to the performance of what is Waajib on him *(which is the Zuhr Salaah incumbent upon him)* **then when the time** *(of Zuhr Salaah)* **is repeated so too will its compulsion. Thus the Amr will include whatever is Waajib upon him** *(such as the Zuhr of the next day as well)* **as it refers to the entire class of what is Waajib on him, whether it be fasting or Salaah. Thus the repetition of Ibaadaat is** *(Waajib)* **in this manner and not that Amr necessitates repetition.**

Two types of Ma'moor Bihi

فصل

اَلْمَامُوْرُ بِهِ نَوْعَانِ مُطْلَقٌ عَنِ الْوَقْتِ وَمُقَيَّدٌ بِهِ وَحُكْمُ الْمُطْلَقِ أنْ يَّكُوْنَ الاَدَاءُ وَاجِباً عَلَى التَّرَاخِىْ بِشَرْطِ اَنْ لاَ يَفُوْتَه فِى الْعُمْرِ

Ma'moor Bihi *(the act which one has been ordered to perform)* **is of two types; Mutlaq anil Waqt** *(not restricted to a specific time)* **and Muqayyad bil Waqt** *(restricted to a specific time)*. **The ruling of Mutlaq anil Waqt is that it is Waajib with 'Taraakhee'** *(even though Waajib it does not need to be performed immediately)* **as long as it is performed before one's death** *(thus once will not be regarded as sinful in delaying its performance as long as one carries it out before one's death. If one passes away without performing it then he will be sinful)***.**

وَعَلٰى هٰذَا قَالَ مُحَمَّدٌ فِى الْجَامِعِ لَوْ نَذَرَ اَنْ يَّعْتَكِفَ شَهْرًا لَه اَنْ يَّعْتَكِفَ أىَّ شَهْرٍ شَاءَ وَلَوْ نَذَرَ اَنْ يَّصُوْمَ شَهْراً لَه اَنْ يَّصُوْمَ اىَّ شَهْرٍ شَآءَ وَفِى الزَّكٰوةِ وَصَدَقَةِ الْفِطْرِ وَالْعُشْرِ اَلْمَذْهَبُ الْمَعْلُوْمُ اَنَّه لاَ يَصِيْرُبِالتَّاخِيْرِ مُفْرِطاً فَاِنَّه لَوْ هَلَكَ النِّصَابُ سَقَطَ الْوَاجِبُ وَالْحَانِثُ اِذَا ذَهَبَ مَالُه وَصَارَ فَقِيْراً كَفَّرَ بِالصَّوْمِ

Based upon this *(that the performance of Amr-Mutlaq anil Waqt can be delayed)* **Imam Muhammed has said in 'Al-Jaami'ul Kabeer' that if a person vows to perform I'etikaaf**

for a month, then he may perform this I'etikaaf in any month he desires and *(in a similar manner)* **if he vows to fast for a month then he may fast in any month he desires. The well-known verdict** *(Shar'ie stance)* **with regards to Zakaat, Sadaqaatul- Fitr and Ushr is that one does not become sinful in delaying its fulfilment because if he loses the Nisaab** *(the amount on which Zakaat or Sadaqah becomes Waajib)* **then it will no longer be Waajib** *(to pay the Zakaat or Sadaqah)* **and if one who broke his oath loses his wealth and becomes destitute then he will complete the Kaffaarah through fasting.**

Mutlaq anil Waqt is Waajib Kaamil

وَعَلٰى هٰذَا لاَ يَجُوْزُ قَضَاءُ الصَّلٰوةِ فِي الاَوْقَاتِ الْمَكْرُوْهَةِ لاَنَّه لَمَّا وَجَبَ مُطْلَقاً وَجَبَ كَامِلاً فَلاَ يَخْرُجُ عَنِ الْعُهْدَةِ بِاَدَاءِ النَّاقِص فَيَجُوْزُ الْعَصْرُ عِنْدَالاِحْمِرَارِ اَدَاءً وَلاَ يَجُوْزُ قَضَاءً وَعَنِ الْكَرْخِيِّ اَنَّ مُوْجَبَ الاَمْرِ الْمُطْلَقِ الْوُجُوْبُ عَلَى الْفَوْرِ وَالْخِلاَفُ مَعَه فِى الْوُجُوْبِ وَلاَ خِلاَفَ فِى اَنَّ الْمُسَارَعَةَ اِلَى الاِيْتِمَارِ مَنْدُوْبٌ اِلَيْهَا

Based upon this *(that one will not be sinful for delaying the performance of Amr-Mutlaq anil Waqt)* **it is not permissible to perform Qadhaa Salaah** *(the missed Salaah, which is not restricted to time and may be performed at any time)* **in the** *(three)* **forbidden times** *(sunrise, sunset, midday)* **because when it is Waajib Mutlaqan** *(without restriction)* **it is** *(still)* **Waajib Kaamil** *(perfectly)* **and one will not be absolved of it by performing it defective** *(and since these three times are defective times the Qadhaa Salaah performed in this time will be defective)***. Performance of** *(that days)* **Asr Salaah is permissible close to Sunset but Qadhaa Salaah is not** *(as the Sabab for the Wujoob of Asr performed close to sunset is defective thus performing it in a defective manner/time is also permissible)***. Imaam Karkhi □ is of the opinion that Amr-**

Mutlaq anil Waqt is Waajib immediately *(such that one who delays in performing it will be sinful)***. Our disagreement with him is with regards to it being Waajib** *(he regards it as Waajib immediately and we regard say that even though it is waajib it is not compulsory to perform it immediately)* **and we do not disagree that performing it as soon as possible is Mustahab.**

Types of Amr-Muqayyad bil Waqt

وَاَمَّا الْوَقْتُ فَنَوْعَانِ نَوْعٌ يَكُوْنُ الْوَقْتُ ظَرْفًا لِلْفِعْلِ حَتّٰى لاَ يَشْتَرِطُ اِسْتِيْعَابُ كُلِّ الْوَقْتِ بِالْفِعْلِ كَالصَّلٰوةِ

Amr-Muqayyad bil Waqt is of two types; *(the first is)* **where** *(a specific)* **time is the <u>period in which the act can be carried out</u> such that it is not necessary that the entire period be spent in that act, for example Salaah** *(the various Salaah are compulsory in their designated times but it is not necessary for one to spend the entire time, for example the time of Zuhr, engaged in the Salaat of Zuhr)***.**

The ruling of the first type

وَمِنْ حُكْمِ هٰذَا النَّوْعِ اَنَّ وُجُوْبَ الْفِعْلِ فِيْهِ لاَ يُنَافِىْ وُجُوْبَ فِعْلٍ اٰخَرَ فِيْهِ مِنْ جِنْسِهِ حَتّٰى لَوْ نَذَرَ اَنْ يُّصَلِّىَ كَذَا وَ كَذَا رَكْعَةً فِىْ وَقْتِ الظُّهْرِ لَزِمَه

The ruling of this type *(where a specific time is the period in which the act can be carried out)* **is that an act being Waajib in that time** *(period)* **does not oppose another act similar to it being waajib in that same time, such that if a person makes a vow to perform a certain Salaah in the time of Zuhr, it** *(the Salaah which one vowed to perform)* **will be compulsory** *(to perform)***.**

وَمِنْ حُكْمِهِ اَنَّ وُجُوْبَ الصَّلٰوةَ فِيْهِ لاَ يُنَافِىْ صِحَّةَ صَلٰوةٍ اُخْرٰى فِيْهِ حَتّٰى لَوْ شَغَلَ جَمِيْعَ وَقْتِ الظُّهْرِ بِغَيْرِ الظُّهْرِ يَجُوْزُ

The ruling of this type *(is also)* **that Salaah being Waajib in it will not negate the permissibility of** *(performing)* **other Salaah in it** *(that time period)* **such that if a person spends the entire time of Zuhr engaged in other Salaah it will be permissible.**

وَمِنْ حُكْمِهِ اَنَّهُ لاَ يَتَاَدَّى الْمَاْمُوْرُ بِهِ اِلاَّ بِنِيَّةٍ مُعَيَّنَةٍ لانَّ غَيْرَه لَمَّا كَانَ مَشْرُوْعاً فِىْ الْوَقْتِ لاَ يَتَعَيَّنُ هُوَ بِالْفِعْلِ وَ اِنْ ضَاقَ الْوَقْتُ لِاَنَّ اِعْتِبَارَ النِّيَّةِ بِاِعْتِبَارِ المُزَاحِمِ وَقَدْ بَقِيَتِ الْمُزَاحَمَةُ عِنْدَ ضَيْقِ الْوَقْتِ

The ruling of this type *(is also)* **that the Ma'moor Bihi** *(what has been made Waajib by the Amr)* **will not be fulfilled except with a specific intention for it** *(one must make the intention to perform it before beginning, in order for it to be fulfilled)* **because when it is permissible to perform acts similar to it in the same time period it cannot be specified by mere action only** *(but intention will be necessary for specification)* **even if the time is short** *(mere action will not suffice but the Salaah will have to be specified by intention)***. The reason for this is that Niyyat is necessary because of the time being crowded** *(with the permissibility to perform any Salaah)* **and this crowdedness still remains when the time is short.**

The second type of Amr-Muqayyad bil Waqt

وَالنَّوْعُ الثَّانِىْ مَا يَكُوْنُ الْوَقْتُ مِعْيَارًا لَه وَذٰلِكَ مِثْلُ الصَّوْمِ فَاِنَّه يَتَقَدَّرُ بِالْوَقْتِ وَ هُوَ الْيَوْمُ

The second type *(of Amr-Muqayyad bil Waqt)* **is where** *(a specific)* **time is the <u>period in which the act needs to be carried out</u>** *(such that the act needs to be performed in that entire period)***. An example of this is Fasting, which is performed throughout the day.**

The ruling of this type

وَ مِنْ حُكْمِهِ اَنَّ الشَّرْعَ اِذَا عَيَّنَ لَه وَقْتاً لاَ يَجِبُ غَيْرُه فِىْ ذٰلِكَ الْوَقْتِ وَلاَ يَجُوْزُ اَدَاءُ غَيْرِهِ فِيْهِ حَتّٰى اَنَّ الصَّحِيْحَ الْمُقِيْمَ لَوْ اَوْقَعَ اِمْسَاكَه فِىْ رَمَضَانَ عَنْ وَاجِبِ اٰخَرَ يَقَعُ عَنْ رَمَضَانَ لاَ عَمَّا نَوٰى وَ اِذَا اِنْدَفَعَ الْمُزَاحِمُ فِى الْوَقْتِ سَقَطَ اِشْتِرَاطُ التَّعْيِيْنِ فَاِنَّ ذٰلِكَ لِقَطْعِ الْمُزَاحَمَةِ وَلاَ يَسْقُطُ اَصْلُ النِّيَّةِ لِاَنَّ الْاِمْسَاكَ لاَ يَصِيْرُ صَوْماً اِلاَّ بِالنِّيَّةِ فَاِنَّ الصَّوْمَ شَرْعاً هُوَ الْاِمْسَاكُ عَنِ الْاَكْلِ وَالشُّرْبِ وَالْجِمَاعِ نَهَارًا مَعَ النِّيَّةِ

The ruling of this type *(where a specific time is the period in which the act needs to be carried out)* **is that wherever the Shari'ah has specified a time** *(period in which the act needs to be performed)* **another act** *(similar in nature)* **cannot be Waajib in that time nor is it permissible to perform another** *(act similar in nature)* **in that time such that if a healthy resident makes the intention for his fast in Ramadaan for another Waajib fast, his fast will be for Ramadaan and not for what he intended. Since the time period is not crowded** *(by similar acts being permissible in that same time period)* **the condition of specifying** *(with intention)* **falls away as it** *(specifying with intention)* **was to remove the crowdedness** *(caused by other similar acts being permissible in that time)***. However Niyyat** *(to make the intention of fasting)* **itself will not fall away as abstaining will only become fasting with intention** *(of fasting)* **as fasting according to Shari'ah is abstaining from eating, drinking and sexual relations during the day with intention** *(of fasting)***.**

وَ اِنْ لَمْ يُعَيِّنِ الشَّرْعُ لَه وَقْتًا فَاِنَّه لاَ يَتَعَيَّنُ الْوَقْتُ لَه بِتَعْيِيْنِ الْعَبْدِ حَتّٰى لَوْ عَيَّنَ الْعَبْدُ اَيَّاماً لِقَضَاءِ رَمَضَانَ لاَ تَتَعَيَّنُ هِىَ لِلْقَضَاءِ وَ يَجُوْزُ فِيْهَا صَوْمُ الْكَفَّارَةِ وَالنَّفْلِ وَيَجُوْزُ قَضَاءُ رَمَضَانَ فِيْهَا وَغَيْرِهَا وَمِنْ حُكْمِ هٰذَا النَّوْعِ اِشْتِرَاطُ تَعْيِيْنِ النِّيَّةِ لِوُجُوْدِ الْمُزَاحِمِ

If the Shari'ah has not specified a time then it cannot be specified by man such that if a person specifies a certain day for the Qadhaa fast of Ramadaan then it will not be taken to be specified and it will be permissible to keep the fasts of Kaffaarah, Nafl *(optional)* **fasts as well as the Qadhaa fasts of Ramadaan and others. The ruling of this type** *(where the Shari'ah has not specified a time)* **is that Niyyat** *(to specify the fast one is keeping through intention)* **is necessary because of it being crowded** *(by acts similar in nature all being permissible in that same time)***.**

ثُمَّ لِلْعَبْدِ اَنْ يُوْجِبَ شَيْئاً عَلٰى نَفْسِهِ مُوَقَّتًا اَوْ غَيْرَ مُوَقَّتٍ وَلَيْسَ لَه تَغْيِيْرُ حُكْمِ الشَّرْعِ

Then it is permissible for a person to make something Waajib upon himself, restricted to a certain time or unrestricted, but he cannot change the ruling of Shari'ah.

مِثَالُه اِذَا نَذَرَ اَنْ يَصُوْمَ يَوْمًا بِعَيْنِهِ لَزِمَه ذٰلِكَ وَلَوْ صَامَه عَنْ قَضَاءِ رَمَضَانَ اَوْ عَنْ كَفَّارَةِ يَمِيْنِهِ جَازَ لاِنَّ الشَّرْعَ جَعَلَ الْقَضَاءَ مُطْلَقاً فَلاَ يَتَمَكَّنُ الْعَبْدُ مِنْ تَغْيِيْرِهِ بِالتَّقْيِيْدِ بِغَيْرِهِ ذٰلِكَ الْيَوْمِ وَلاَ يَلْزَمُ عَلٰى هٰذَا مَا اِذَا صَامَهُ عَنْ نَفْلٍ حَيْثُ يَقَعُ عَنِ الْمَنْذُوْرِ لاَ عَمَّا نَوٰى لاِنَّ النَّفْلَ حَقُّ الْعَبْدِ اِذْ هُوَ يَسْتَبِدُّ بِنَفْسِهِ مِنْ تَرْكِهِ وَتَحْقِيْقِهِ فَجَازَ اَنْ يُؤثِرَ فِعْلُه فِيْمَا هُوَحَقُّه لاَ فِيْمَا هُوَ حَقُّ الشَّرْعِ

An example of this *(that a person can make something Waajib upon himself but cannot change the ruling of Shari'ah)***is when a person vows to fast on a specific day, making it compulsory to keep that fast. If he were to then keep a**

Qadhaa fast of Ramadaan or fast for his Kaffaarah for breaking an oath then it will be permissible. The reason for this is that the Shari'ah has made keeping Qadhaa Mutlaq *(not restricted to a time and can be kept or made at any time)* **thus it is not possible for a person to specify it to another day besides that day. This** *(ruling above that)* **does not apply to when a person keeps a Nafl fast** *(on the day he made a vow to keep a fast)* **such that it will fulfil his vow and will not be for the intention he kept it because Nafl is the right of the person as one was the choice to leave it or complete it, thus it will be permissible to give preference to his own actions** *(the vow he made)* **over his own rights** *(the Nafl fast)* **and not the rights of Shari'ah.**

Rulings deduced from the above

وَعَلٰى اِعْتِبَارِ هٰذَا الْمَعْنٰى قَالَ مَشَائِخُنَا اِذَا شَرَطَا فِى الْخُلْعِ اَنْ لاَ نَفقَةَ لَهَا وَلاَ سُكْنٰى سَقَطَتِ النَّفَقَةُ دُوْنَ السُّكْنٰى حَتّٰى لاَ يَتَمَكَّنَ الزَّوْجُ مِنْ اِخْرَاجِهَا عَنْ بَيْتِ الْعِدَّةِ لانَّ السُّكْنٰى فِى بَيْتِ الْعِدَّةِ حَقُّ الشَّرْعِ فَلاَ يَتَمَكَّنُ الْعَبْدُ مِنْ اِسْقَاطِهِ بِخِلاَفِ النَّفَقَةِ

Based upon this *(that a person actions will given preference over his rights and not the rights stipulated by Shari'ah)* **our scholars say that if a couple stipulate the condition when making Khul'aa** *(when the husbands concedes to issuing a Talaaq in exchange for recompense)* **that no maintenance will be given nor living quarters provided***(during the period of Iddah)* **then** *(the right to)* **maintenance will be ceded** *(and the husband will not need to provide maintenance)* **but living quarters will not such that it is not possible** *(not permissible)* **for the husband to expel her from the house during the Iddah. The reason for this** *(why maintenance will be ceded and not living quarters)* **is that the right to living quarters in the house of Iddah is a right of Shari'ah and it is not**

possible for a person to cede such a right as opposed to maintenance *(which is the right of the woman)***.**

Amr necessitates Hasan in the Ma'moor Bihi

فصل

اَلاَمْرُ بِالشَّيِّءِ يَدُلُّ عَلٰى حُسْنِ الْمَامُوْرِ بِهِ اِذَا كَانَ الأٰمِرُ حَكِيْمًا لانَّ الاَمْرَ لِبَيَانِ اَنَّ الْمَامُوْرَ بِهِ مِمَّا يَنْبَغِىْ اَنْ يُوْجَدَ فَاقْتَضٰى ذٰلِكَ حُسْنَهُ

Amr of an act necessitates that the Ma'moor Bihi *(the act being ordered)* **is Hasan** *(is good/virtuous)* **if the one giving the Amr is Hakeem** *(Wise)***. The reason for this is that Amr is to point out that the Ma'moor Bihi is amongst those things which are appropriate to do, thus necessitating that they be Hassan** *(as ALLAAH Ta'ala would never order the perpetration of immorality or futility)***.**

Two type of Hasan in Ma'moor Bihi

ثُمَّ الْمَامُوْرُ بِهِ فِىْ حَقِّ الْحُسْنِ نَوْعَانِ حَسَنٌ بِنَفْسِهِ وَحَسَنٌ لِغَيْرِهِ فَالْحَسَنُ بِنَفْسِهِ مِثْل الايْمَانِ بِاللهِ تَعَالٰى وَ شُكْرِ الْمُنْعِمِ وَالصِّدْقِ وَالْعَدْلِ وَالصَّلٰوةِ نَحْوِهَا مِنَ الْعِبَادَاتِ الْخَالِصَةِ

Then Hasan in the Ma'moor Bihi is divided into two types; Hasan bi Nafsihi and Hasan Li-Ghairihi. Examples of Hasan bi Nafsihi *(where the goodness is in the act itself)***is Imaan in ALLAAH, gratitude for the bounties** *(ALLAAH has showered on a person)***, truthfulness, justice, Salaah, etc, from the acts of worship.**

The ruling of Hasan bi Nafsihi

فَحُكْمُ هٰذَا النَّوْعِ اَنَّهُ اِذَا وَجَبَ عَلَى الْعَبْدِ اَدَائُه لاَ يَسْقُطُ اِلاَّ بِالاَدَاءِ وَ هٰذَا فِيْمَا لاَ يَحْتَمِلُ السُّقُوْطَ مِثْلُ الايْمَانِ بِاللهِ تَعَالٰى

The ruling of this category *(that Ma'moor Bihi-Hasan bi Nafsihi which never falls away and has to be performed at all times)* **is that if performance is Waajib on a person then one will not be absolved from it except by fulfilling it** *(perpetually, acting on it at all times)***, this is the ruling for that Amr which never falls away such as Imaam in ALLAAH** *(one has to have Imaan at every moment and one is never excused or absolved from it)***.**

وَ اَمَّا مَا يَحْتَمِلُ السُّقُوْطَ فَهُوَ يَسْقُطُ بِالأَدَاءِ اَوْ بِاسْقَاطِ الْأَمِرِ

(The ruling for the second type of Hasan bi Nafsihi, namely) **That which does fall away** *(one is absolved of it after performing it)* **is that it falls away by performance** *(of the act)* **or if the one who issued the order cancels the order.**

Rulings deduced from the above

وَعَلٰى هٰذَا قُلْنَا اِذَا وَجَبَتِ الصَّلٰوةُ فِىْ اَوَّلِ الْوَقْتِ سَقَطَ الْوَاجِبُ بِالْاَدَاءِ أَوْ بِاِعْتِرَاضِ الْجُنُوْنِ وَ الْحَيْضِ وَ النِّفَاسِ فِى اٰخِرِ الْوَقْتِ بِاِعْتِبَارِ اَنَّ الشَّرْعَ اَسْقَطَهَا عَنْهُ عِنْدَ هٰذِهِ الْعَوَارِضِ وَ لَا يَسْقُطُ بِضِيْقِ الْوَقْتِ وَ عَدَمِ الْمَاءِ وَ اللِّبَاسِ وَنَحْوِهِ

Based upon this *(principle; that which does fall away, falls away by its performance or if the one who issued the order cancels the order)* **we say that if Salaah became Waajib when the time set in then one will be absolved of it through performance** *(of the Salaah)* **or if one went into a state of insanity, Haidh** *(menstruation)* **or Nifaas** *(post natal bleeding)* **after the time set in because** *(the reason for absolving a person of this Waajib because of insanity, Haidh or Nifaas)* **the Shari'ah has absolved one from this duty**

when in such a state *(of insanity, Haidh, or Nifaas)***.** *(However)* **It will not fall away because of insufficient time, lack of water or clothing, etc** *(as Salaah can still be performed after the time has expired as Qadhaa Salaah, or with Tayammum if no water is available or naked if one does not have clothing)***.**

Hasan Li-Ghairihi

اَلنَّوْعُ الثَّانِيْ مَا يَكُوْنُ حَسَنًا بِوَاسِطَةِ الْغَيْرِ وَ ذٰلِكَ مِثْلُ السَّعْيِ اِلَى الْجُمْعَةِ وَ الْوُضُوْءُ لِلصَّلٰوةِ فَاِنَّ السَّعْىَ حَسَنٌ بِوَاسِطَةِ كَوْنِهِ مُفْضِيًا اِلٰى اَدَاءِ الْجُمْعَةِ وَ الْوُضُوْءُ حَسَنٌ بِوَاسِطَةِ كَوْنِهِ مِفْتَاحًا لِلصَّلٰوةِ

The second type *(of Hasan in the Ma'moor Bihi)* **is that which is Hasan** *(good/virtuous)* **because of something else** *(the objective behind the act is what makes the act itself Hasan)***. An example of this** *(Hasan Li-Ghairihi)* **is hurrying towards the Jumu'ah Salaah and** *(performing)* **Wudhu for Salaah, as hurrying** *(even though it might not be considered good by itself)* **is Hasan because of it taking one towards the performance of Jumu'ah Salaah and Wudhu is Hasan because of it being the key** *(prerequisite)* **to** *(of)* **Salaah.**

The ruling of Hasan Li-Ghairihi

وَحُكْمُ هٰذَا النَّوْعِ اَنَّهُ يَسْقُطُ بِسُقُوْطِ تِلْكَ الْوَاسِطَةِ حَتّٰى اَنّ السَّعْىَ لَا يَجِبُ عَلٰى مَنْ لَا جُمْعَةَ عَلَيْهِ وَلَا يَجِبُ الْوُضُوْءُ عَلٰى مَنْ لَا صَلٰوةَ عَلَيْهِ وَ لَوْ سَعٰى اِلَى الْجُمْعَةِ فُحُمِلَ مُكْرَهًا اِلٰى مَوْضَعٍ اٰخَرَ قَبْلَ اِقَامَةِ الْجُمْعَةِ يَجِبُ عَلَيْهِ السَّعْىُ ثَانِيًا وَلَوْ كَانَ مُعْتَكِفًا فِى الْجَامِعِ يَكُوْنُ السَّعْىُ سَاقِطًا عَنْهُ وَ

كَذٰلِكَ لَوْ تَوَّضَأ فَاَحْدَثَ قَبْلَ اَدَاءِ الصَّلٰوةِ يَجِبُ عَلَيْهِ الْوُضُوْءُ ثَانِيًا وَ لَوْ كَانَ مُتَوِضِّيًا عِنْدَ وُجُوْبِ الصَّلٰوةِ لَا يَجِبُ عَلَيْهِ تَجْدِيْدُ الْوُضُوْءِ

The ruling of this category *(Hasan Li-Ghairihi)* **is that it** *(its necessity)* **falls away if its cause** *(that which makes it Hasan)* **falls away such that hurrying towards Jumu'ah Salaah will not be Waajib on that person upon whom Jumu'ah Salaah is not Waajib nor will Wudhu be Waajib upon that person upon Wudhu is not Waajib.** *(However)***If a person hurries towards Jumu'ah Salaah but is then forcefully taken elsewhere, it will Waajib upon him to hurry towards the Jumu'ah Salaah a second time** *(as the Jumu'ah Salaah is still Waajib on him and has not fallen away)***. If a person is performing I'etikaaf in a Jaamie Masjid then hurrying towards Jumu'ah Salaah will fall away** *(as he is already present for the Jumu'ah Salaah which is the purpose of rushing)***. In a similar manner** *(to the two rulings mentioned above)* **if a person performs Wudhu but his Wudhu breaks before performing Salaah, it will be Waajib for him to perform Wudhu a second time** *(as the Salaah is till Waajib on him)* **and if he already is in a state of Wudhu when Salaah begins, it will not be Waajib for him to make Wudhu a second time** *(as he is already in a state of purity which is the purpose of making Wudhu before Salaah)***.**

Other acts which are Hasan Li-Ghairihi

وَ الْقَرِيْبُ مِنْ هٰذَا النَّوْعِ اَلْحُدُوْدُ وَ الْقِصَاصُ وَالْجِهَادُ فَاِنَّ الْحَدَّ حَسَنٌ بِوَاسِطَةِ الزَّجْرِ عَنِ الْجِنَايَةِ وَالْجِهَادُ حَسَنٌ بِوَاسِطَةِ دَفْعِ شَرِّ الْكَفَرَةِ وَاِعْلاَءِ كَلِمَةِ الْحَقِّ وَلَوْ فَرَضْنَا عَدْمَ الْوَاسِطَةِ لاَ يَبْقٰى ذٰلِكَ مَأْمُوْراً بِهِ فَاِنَّه لَوْلاَ الْجِنَايَةُ لاَ يَجِبُ الْحَدُّ وَ لَوْ لاَ الْكُفْرُ الْمُفْضِيُّ اِلَى الْحَرْبِ لاَ يَجِبُ عَلَيْهِ الْجِهَادُ

Close to this category *(of Hasan Li-Ghairihi)* **is Hudood, Qisaas** *(the Shar'ie punishments and penalties for various crimes)***, and Jihaad as punishments are good because of it preventing crime and Jihaad is good because it eliminates the evils of the Kuffaar and establishes the word** *(laws)* **of ALLAAH. If we were to say** *(hypothetically)* **that the reason which makes it good does not exist then it would no longer be the Ma'moor Bihi** *(that is the order to carry it out would no longer apply)* **because if there is no crime then punishment will not be Waajib and if there is no Kufr which leads to battle then Jihaad would not be Waajib.**

Waajib established by Amr is of two types

فصل

اَلْوَاجِبُ بِحُكْمِ الاَمْرِ نَوْعَانِ اَدَاءٌ وَقَضَاءٌ فَالاَدَاءُ عِبَارَةٌ عَنْ تَسْلِيْمِ عَيْنِ الْوَاجِبِ اِلٰى مُسْتَحِقِّهِ وَالْقَضَاءُ عِبَارَةٌ عَنْ تَسْلِيْمِ مِثْلِ الْوَاجِبِ اِلٰى مُسْتَحِقِّهِ

Waajib which has been established by Amr is of two types; Adaa and Qadhaa. Adaa is fulfilling the Waajib precisely to in the manner ordained *(for example performing Salaah in its appropriate time)***. Qadhaa is fulfilling similar to the Waajib similar to what has been ordained** *(for example performing Salaah after its time has expired)***.**

ثُمَّ الاَدَاءُ نَوْعَانِ كَامِلٌ وَقَاصِرٌ

Then Adaa is divided *(further)* **into two types; Kaamil** *(to perform the act in the manner and with the same characteristics as it was made Waajib on a person)* **and Qaasir** *(to perform the act with a slight defect in the characteristics prescribed)***.**

Examples of Adaa-Kaamil

فَالْكَامِلُ مِثْلُ اَدَاءِ الصَّلٰوةِ فِىْ وَقْتِهَا بِالْجَمَاعَةِ اَوِ الطَّوَافِ مُتَوَضِّياً وَتَسْلِيْمِ الْمَبِيْعِ سَلِيْمًا كَمَا اقْتَضَاهُ الْعَقْدُ اِلَى الْمُشْتَرِىْ وَتَسْلِيْمِ الْغَاصِبِ الْعَيْنَ الْمَغْصُوْبَةَ كَمَا غَصَبَهَا

An example of Adaa-Kaamil is performing Salaah in its proper time with Jamaat or performing Tawaaf with Wudhu and handing over the purchased item undamaged as was contracted with the buyer and a bandit handing over the seized property in the very same condition it was seized.

The ruling of Adaa-Kaamil

وَحُكْمُ هٰذَا النَّوْعِ اَنْ يُحْكَمَ بِالْخُرُوْجِ عَنِ الْعُهْدَةِ بِهِ

The ruling of this category *(Adaa-Kaamil)* **is that one will be absolved** *(entirely)* **of his duty** *(responsibility)* **by performing it** *(in a perfect manner)***.**

Rulings derived from the above

وَعَلٰى هٰذَا قُلْنَا اَلْغَاصِبُ اِذَا بَاعَ الْمَغْصُوْبَ مِنَ الْمَالِكِ اَوْ رَهِنَه عِنْدَه اَوْ وَهَبَه لَه وَسَلَّمَه اِلَيْهِ يَخْرُجُ عَنِ الْعُهْدَةِ وَيَكُوْنُ ذٰلِكَ اَدَاءً لِحَقِّهِ وَيَلْغُوْ مَا صَرَّحَ بِهِ مِنَ الْبَيْعِ وَالْهِبَةِوَلَوْغَصَبَ طَعَاماً فَاَطْعَمَهُ مَالِكه وَ هُوَ لاَ يَدْرِىْ اَنَّه طَعَامُه اَوْ غَصَبَ ثَوْباً فَأَلْبَسَه مَالِكَه وَ هُوَ لاَ يَدْرِىْ اَنَّه ثَوْبُه يَكُوْنُ ذٰلِكَ اَدَاءً لِحَقِّهِ

Based upon this *(principle mentioned above that one will be absolved entirely by performing it in a perfect manner)* **we say that if the person who forcefully seized another's property sells it back to the owner or left it as guarantee** *(for payment)* **with him** *(known as Rahan)* **or gifted it to him** *(the owner)* **and then hands it over to him then he will no longer be liable for it and this** *(handing over of the property)* **will be taken as Adaa- Kaamil** *(fulfilling his right perfectly)*. **The conditions stipulated by the sale or gift** *(as well as Rahan)* **will be void** *(and the original owner can take possession of it without recompense)*. *(Similarly)* **If a person forcefully seizes food and feeds the owner such that the owner does not know that it is the food that was taken from him, or clothes are seized and given to the owner to wear such that he does not know that it is his clothes, then this will be taken to be Adaa- Kaamil** *(fulfilling his right perfectly and in all the cases mentioned above nothing further will be levied upon the one who seized the items)*.

وَالْمُشْتَرِىْ فِى الْبَيْعِ الْفَاسِدِ لَوْ اَعَارَ الْمَبِيْعَ مِنَ الْبَائِع اَوْ رَهنَه عِنْدَه اَوْ اٰجَرَه مِنْهُ اَوْ بَاعَه مِنْهُ اَوْ وَهَبَ لَه وَسَلَّمَه يَكُوْنُ ذٰالِكَ اَدَاءً لِحَقِّهِ وَيَلْغُوْ مَا صَرَّحَ بِهِ مِنَ الْبَيْعِ وَالْهِبَةِ وَنَحْوِه

(Similarly) **If the purchaser in an illegitimate sales transaction** *(in which it is compulsory for the purchaser to return the goods back to the seller)***lends the seller the purchased item, leaves it as guarantee with the buyer, rents it to him, sells it** *(back)* **to him, or gifts it to him and then hands it over to the buyer then this will be considered to be Adaa-Kaamil** (fulfilling the right perfectly) **and the conditions** *(of sale, rent, lending, etc)* **will all be void.**

Definition of Adaa- Qaasir

وَاَمَّا الاَدَاءُ الْقَاصِرُ فَهُوَ تَسْلِيْمُ عَيْنِ الْوَاجِبِ مَعَ النُّقْصَانِ فِىْ صِفَتِهِ نَحْوُ الصَّلٰوةُ بِدُوْنِ تَعْدِيْلِ الاَرْكَانِ اَوِالطَّوَافِ مُحْدِثاً وَرَدِّ الْمَبِيْعِ مَشْغُوْلاً بِالدَّيْنِ اَوْ بِالْجِنَايَةِ وَرَدِّ الْمَغْصُوْبِ مُبَاحَ الدَّمِ بِالْقَتْلِ مَشْغُوْلاً بِالدَّيْنِ اَوِالْجِنَايَةِ بِسَبَبٍ عِنْدَ الْغَاصِبِ وَاَدَاءِ الزُّيُوْفِ مَكَانَ الْجِيَادِ اِذَا لَمْ يَعْلَمِ الدَّائِنُ ذٰلِكَ

Adaa- Qaasir is to perform the act with a slight defect in the characteristics prescribed such as *(for example)* **performing Salaah hastily** *(rushing thus abandoning Ta'adeel)* **or performing Tawaaf without Wudhu or handing over the purchased item** *(such as a slave)* **such that it is deep in debt or has been sentenced for punishment** *(whereas this was not the state when the transaction was made)* **or returning the seized item** *(such as a slave)* **such that it has been sentenced to death** *(for having committed murder)* **or is deep in debt or sentenced for punishment for something it did while in the possession of the one who seized it***(in all the above cases the act has been performed or item returned with defect)***.** *(Another example of Adaa- Qaasir is)***Paying with defective currency in place of genuine when the creditor is unaware of it.**

The ruling of Adaa- Qaasir

وَحُكْمُ هٰذَا النَّوْعِ اَنَّه اِنْ اَمْكَنَ جَبْرُ النُّقْصَانِ بِالْمِثْلِ يَنْجَبِرُ بِهِ وَاِلاَّ يَسْقُطُ حُكْمُ النُّقْصَانِ اِلاَّ فِى الاثْمِ

The ruling of this category *(Adaa- Qaasir)* **is that if it is possible to compensate for the fault in a like manner then it will be offset by it** *(the compensation)* **and if not** *(it cannot be compensated for in a like manner)* **then the fault will be excused but not the sin** *(even though one will not have to compensate for the fault, he will still be regarded as sinful)***.**

Rulings deduced from the above

وَعَلٰى هٰذَا اِذَا تَرَكَ تَعْدِيْلَ الاَرْكَانِ فِىْ بَابِ الصَّلٰوةِ لاَ يُمْكِنُ تَدَارُكُهُ بِالْمِثْلِ اِذْ لاَ مِثْلَ لَه عِنْدَ الْعَبْدِ فَيَسْقُطُ وَلَوْ تَرَكَ الصَّلٰوةَ فِىْ اَيَّامِ التَّشْرِيْقِ فَقَضَاهَا فِىْ غَيْرِ اَيَّامِ التَّشْرِيْقِ لاَ يُكَبِّرُ لانَّه لَيْسَ لَهُ التَّكْبِيْرُ بِالْجَهْرِ شَرْعاً وَ قُلْنَا فِىْ تَرْكِ قِرَائَةِ الْفَاتِحَةِ وَالْقُنُوْتِ وَالتَّشَهُّدِ وَتَكْبِيْرَاتِ الْعِيْدَيْنِ اَنَّه يَنْجَبِرُ بِالسَّهْوِ وَلَوْطَافَ طَوَافَ الْفَرْضِ مُحْدِثًا يَنْجَبِرُ ذٰلِكَ وَهُوَ بِالدَّمِ وَهُوَ مِثْلٌ لَه شَرْعًا

Based upon this *(that in Adaa-Qaasir, if the fault can be compensated for in a like manner then it will be offset by it and if not then the fault will be excused)* **we say since there is no like compensation if a person performs Salaah hastily** *(without Ta'adeel)* **there will be no compensation for it and it** *(the fault caused by performing Salaah hastily)* **will be excused** *(but he will still be sinful for doing so)***. If a person did not perform his Salaah during the days of Tashreek and then performed Qadhaa of those** *(missed)* **Salaah on some other day, then he will not make Takbeer** *(Takbeer-Tashreek)* **as according to Shari'ah there is Takbeer Tashreek on those days** *(since there is no compensation for the missed Takbeer it will be excused)***. We say that not reciting Surah Faatihah, Dua-Qunoot, Tashahud and the Takbeeraat of the two Eid Salaah will be compensated for with Sajdah Sahw and if one performed Fardh Tawaaf without Wudhu then it will be compensated for with sacrifice** *(of a sheep)* **as this is the like compensation** *(for these faults)* **as stipulated by Shari'ah.**

وَعَلَى هٰذَا لَوْ اَدّٰى زَيِّفًا مَكَانَ جَيِّدٍ فَهَلَكَ عِنْدَ الْقَابِضِ لاَ شَئَ لَهُ عَلَى الْمَدْيُوْنِ عِنْدَ اَبِىْ حَنِيْفَةَ لانَّهُ لاَ مِثْلَ لِصِفَةِ الْجَوْدَةِ مُنْفَرِدَةً حَتّٰى يُمْكِنَ جَبْرُهَا بِالْمِثْلِ وَلَوْ سَلَّمَ الْعَبْدَ مُبَاحَ الدَّمِ بِجِنَايَةٍ عِنْدَ الْغَاصِبِ اَوْ عِنْدَ الْبَائِعِ بَعْدَ الْبَيْعِ فَاِنْ هَلَكَ عِنْدَ الْمَالِكِ اَوِ الْمُشْتَرِىْ قَبْلَ الدَّفْعِ لَزِمَهُ الثَّمَنُ وَبَرِىَ

الْغَاصِبُ بِاِعْتِبَارِ اَصْلِ الاَدَاءِ وَاِنْ قُتِلَ بِتِلْكَ الْجِنَايَةِ اِسْتَنَدَ الْهَلاَكُ اِلٰى اَوَّلِ سَبَبِهِ فَصَارَ كَاَنَّه لَمْ يُوْجَدِ الاَدَاءُ عِنْدَ اَبِىْ حَنِيْفَةَ رَحِمَهُ اللهُ تَعَالٰى وَالْمَغْصُوْبَةُ اِذَا رُدَّتْ حَامِلاً بِفِعْلٍ عِنْدَ الْغَاصِبِ فَمَاتَتْ بِالْوِلاَدَةِ عِنْدَ الْمَالِكِ لاَ يَبْرَءُ الْغَاصِبُ عَنِ الضَّمَانِ عِنْدَ أَبِىْ حَنِيْفَةَ رحمه الله تعالٰى

Based upon this *(that in Adaa-Qaasir, if the fault can be compensated for in a like manner then it will be offset by it and if not then the fault will be excused)***if a person pays with counterfeit currency in place of genuine and the currency is then lost by the one who took possession of it** *(the creditor losses it)* **then according to Imaam Abu Hanifah nothing** *(no compensation)* **will be incumbent upon the debtor as there is no like compensation for the counterfeit currency itself such that the fault may be overcome with a like compensation.**

*(Similarly another ruling derived from the above is)***If the slave who has been sentenced to death** *(for committing murder)* **for a crime committed while in the possession of the one who seized him is returned** *(back to the original owner)* **or***(the slave who has been sentenced to death for committing murder for a crime committed)***while in the possession the seller after the sale was concluded is handed over to the buyer, and the slave dies after being returned to the owner or after being handed over to the buyer then the price will be incumbent** *(upon the buyer to pay the seller)* **and the one who seized it will be free from his obligation as Adaa has occurred** *(even though Qaasir, and compensation in a like manner is impossible since the slave has died)***.** *(However)* **If the slave is killed because of that crime** *(which he committed while in the possession of the seller or the one who seized it)* **then the loss** *(death)* **will be assigned to the cause of death** *(the death will be said to have occurred when the crime was committed, which would mean that the slave died while in the possession of the seller or seizer)***, thus it would be as if Adaa did not take**

place at all, according to the opinion of Imaam Abu Hanifah .

If a female slave is returned pregnant to her owner, when she conceived while in the possession of the one who seized her, and then later dies during childbirth in the possession of her owner, then the one who seized will not be absolved of recompense according to Imaam Abu Hanifah *(and he will have to pay the owner for the loss of his slave)***.**

Adaa is the primary choice

ثُمَّ الاَصْلُ فِىْ هٰذَا الْبَابِ هُوَ الاَدَاءُ كَامِلاً كَانَ اَوْ نَاقِصاً وَ اِنَّمَا يُصَارُ اِلَى الْقَضَاءِ عِنْدَ تَعَذُّرِ الاَدَاءِ

The primary choice in this section *(the first method of fulfilling the Ma'moor Bihi)* **is Adaa, whether it be Kaamil or Qaasir. Qadhaa will only be resorted to when Adaa is not possible.**

وَ لِهٰذَا يَتَعَيَّنُ الْمَالُ فِى الْوَدِيْعَةِ وَالْوَكَالَةِ وَالْغَصَبِ وَلَوْ اَرَادَ الْمُوْدَعُ وَالْوَكِيْلُ وَالْغَاصِبُ اَن يُمْسِكَ الْعَيْنَ وَيَدْفَعَ مَا يُمَاثِلُه لَيْسَ لَه ذٰلِكَ وَلَوْ بَاعَ شَيْئاً وَسَلَّمَهُ فَظَهَرَ بِهِ عَيْبٌ كَانَ الْمُشْتَرِىْ بِالْخِيَارِ بَيْنَ الأَخْذِ وَالتَّرْكِ فِيْهِ

Based upon this *(that Adaa is the primary choice)* **the merchandise** *(which was left in trust, seized or one deputed to purchase)* **will be fixed when placing something in trust, appointing someone to purchase on one's behalf, or when an item is unlawfully seized** *(and the exact same item has to be returned or handed over because Adaa is resorted to first)***. If the trustee, Wakeel or seizer desires to keep the original merchandise and pay in kind, it will be impermissible to do so.**

If a person a person sells something, hands it over and thereafter a fault is seen in the item, then the buyer has the choice to either keep it as is or return it *(and be refunded)***.**

وَ بِاِعْتِبَارِ اَنَّ الاَصْلَ هُوَ الاَدَاءُ يَقُوْلُ الشَّافِعِىُّ اَلْوَاجِبُ عَلَى الْغَاصِبِ رَدُّ الْعَيْنِ الْمَغْصُوْبَةِ وَ اِنْ تَغَيَّرَتْ فِىْ يَدِ الْغَاصِبِ تَغَيُّراً فَاحِشاً وَ يَجِبُ الاِرْشُ بِسَبَبِ النُّقْصَانِ وَعَلٰى هٰذَا لَوْ غَصَبَ حِنْطَةً فَطَحَنَهَا اَوْ سَاجَةً فَبَنٰى عَلَيْهَا دَاراً اَوْ شَاةً فَذَبَحَهَا وَشَوَّاهَا أَوْ عِنَبًا فَعَصَرَهَا أَوْحِنْطَةً فَزَرَعَهَا وَنَبَتَ الزَّرْعُ كَانَ ذٰلِكَ مِلْكًا لِلْمَالِكِ عِنْدَه وَقُلْنَا جَمِيْعَهَا لِلْغَاصِبِ وَيَجِبُ عَلَيْهِ رَدُّ الْقِيْمَةِ

Based upon this principle that the first choice is that of Adaa *(and Qadhaa is only permitted when Adaa is impossible)* **Imaam Shaafie says that it is Waajib for the one who** *(unlawfully)* **seized another's property to return the very same seized item, even if it has been changed** *(or damaged)* **drastically while in the hands of the seizer, and compensation for the damage will be Waajib upon one who seized it. Based upon this** *(that Imaam Shaafie says it is Waajib to return the very same seized item)* **if a person seizes wheat and grinds it,** *(seizes)* **property and builds a house on it,** *(seizes)* **a sheep, slaughters it and cooks it,** *(seizes)* **grapes and squeezes it** *(extracts its juice)* **or** *(seizes)* **wheat, planting it and causing it to grow then according to Imaam Shaafie this all** *(the grounded wheat, house, cooked meat, grape juice, etc)* **is the property of the** *(original)* **owner. We say** *(scholars of the Hanafi School of jurisprudence)* **that it all belongs to the one who seized it and** *(in such instances)* **he will have to pay the price of the seized item.**

وَلَوْغَصَب فِضَّةً فَضَرَبَهَا دَرَاهِمَ أَوْ تِبْراً فَاتَّخَذَهَا دَنَانِيْرَ أَوْ شَاةً فَذَبَحَهَا لاَ يَنْقَطِعُ حَقُّ الْمَالِكِ فِىْ ظَاهِرِ الرِّوَايَةِ وَكَذٰلِكَ لَوْ غَصَبَ قُطْناً فَغَزَلَه اَوْ غَزَلاً فَنَسَجَهُ لاَ يَنْقَطِعُ حَقُّ الْمَالِكِ فِىْ ظَاهِرِ الرِّوَايَةِ

(However) **If a person seizes silver and makes Dirhams** *(silver coins)* **with it,** *(seizes)* **gold and makes Dinaars** *(gold coins)* **with it or** *(seizes)* **a sheep and** *(only)* **slaughters it then according to the favoured opinion** *(preferred ruling in the Hanafi Madhab)* **the right of the owner will not be lost** *(and it will still belong to him)***. Similarly if a person seizes cotton and spins it into yarn or** *(seizes)* **yarn and sows it into cloth then according to the favoured opinion** *(preferred ruling in the Hanafi Madhab)* **the right of the owner will not be lost** *(and it will still belong to him)***.**

وَيَتَفَرَّعُ مِنْ هٰذَا مَسْئَلَةُ الْمَضْمُوْنَاتِ وَ لِذَا قَالَ لَوْ ظَهَرَ الْعَبْدُ المَغْصُوْبُ بَعْدَ مَا اَخَذَ الْمَالِكُ ضَمَانَه مِنَ الْغَاصِبِ كَانَ الْعَبْدُ مِلْكًا لِلْمَالِكِ وَالْوَاجِبُ عَلَى الْمَالِكِ رَدُّ مَا اَخَذَ مِن قِيْمَةِ الْعَبْدِ

The ruling of recompense is derived from the above *(mentioned difference of opinion)* **that if the unlawfully seized slave is discovered after the owner has been compensated for its loss by the one who seized it, the slave will still belong to the owner and it will be Waajib for the owner to return the price of the slave which he claimed from the one who seized it** *(according to Imaam Shaafie)***.**

Types of Qadhaa

وَ اَمَّا الْقَضَاءُ فَنَوْعَانِ كَامِلٌ وَقَاصِرٌفَالْكَامِلُ مِنْهُ تَسْلِيْمُ مِثْلِ الْوَاجِبِ صُوْرَةً وَمَعْنىً كَمَنْ غَصَبَ قَفِيْزَ حِنْطَةٍ فَاسْتَهْلَكَهَا ضَمِنَ قَفِيْزَ حِنْطَةٍ وَيَكُوْنَ الْمُوَدّى مِثْلاً لِلأَوَّلِ صُوْرَةً وَمَعْنىً وَكَذٰلِكَ الْحُكْمُ فِىْ جَمِيْعِ الْمِثْلَيَاتِ

Qadhaa is of two types; Kaamil and Qaasir. Qadhaa Kaamil is to present that which is similar to what is Waajib *(on a person)* **in both composition** *(meaning that it is exactly the same in its make-up and structure)* **and meaning** *(the*

price/value is the same as what is Waajib, in other words Qadhaa Kaamil is when the exact act cannot be performed or exact item cannot be returned but an act or item resembling and identical to it, but another, is performed or handed over) **such as when a person forcefully seizes a bag of wheat and then loses** *(it is destroyed or used up)* **then a** *(another)* **bag of wheat** *(similar to the one which was lost will be Waajib upon him)* **thus** *(in this manner)* **what is handed over will resemble the first in both composition and meaning. The ruling is the same in all those items which resemble each other.**

Qadhaa Qaasir

وَاَمَّا الْقَاصِرُ فَهُوَ مَالاَ يُمَاثِلُ الْوَاجِبَ صُوْرَةً وَيُمَاثِلُ مَعْنىً كَمَنْ غَصَبَ شَاةً فَهَلَكَتْ ضَمِنَ قِيْمَتَهَا وَالْقِيْمَةُ مِثْلَ الشَّاةِ مِنْ حَيْثُ الْمَعْنٰى لاَمِنْ حَيْثُ الصُّوْرَةِ

Qadhaa Qaasir is that which is not similar to what is Waajib in composition but similar in meaning *(it has the same value as what is Waajib)* **such as when a person forcefully seizes a sheep which he then loses** *(slaughters, cooks and consumes it)***; the price of it will be Waajib** *(upon the seizer)***.** *(Handing over)* **The price is the same as the sheep in meaning but is not the same in composition** *(the value of the Sheep and the price paid for seizing it is the same but they are not the same in composition as the money obviously differs greatly from that of a sheep it its make up)***.**

Kaamil is the primary choice in Qadhaa

وَالأَصْلُ فِى الْقَضَاءِ اَلْكَامِلُ وَعَلٰى هٰذَا قَالَ أَبُوْحَنِيْفَةَ اِذَا غَصَبَ مِثْلِيًّا فَهَلَكَ فِىْ يَدِهِ وَانْقَطَعَ ذٰلِكَ عَنْ أَيْدِى النَّاسِ ضَمِنَ قِيْمَتَه يَوْمَ الْخُصُوْمَةِ لانَّ الْعِجْزَ عَنْ تَسْلِيْمِ الْمِثْلِ الْكَامِلِ اِنَّمَا يَظْهَرُ عِنْدَ الْخُصُوْمَةِ فَأَمَّا قَبْلَ الْخُصُوْمَةِ فَلاَ لِتَصَوُّرِحُصُوْلِ الْمِثْلِ مِنْ كُلِّ وَجْهٍ

The primary choice in Qadhaa is Qadhaa-Kaamil *(and Qadhaa-Qaasir will only be resorted to when Qadhaa-Kaamil is not possible)***. Based upon this** *(that the primary choice in Qadhaa is Qadhaa-Kaamil)* **Imaam Abu Hanifah says that if a person seizes something which has its equivalent** *(items which are all identical in structure and make-up)* **and then loses it but that** *(item which has an equivalent)***is unattainable from people** *(at that time as it is out of stock or inaccessible)* **then its price on the day of the court case will be made Waajib because his inability to perform Qadhaa Kaamil was made apparent on that day** *(thus the value of the item on the day that it became apparent he is unable to handover its equivalent will be considered)* **but not before the court case** *(such that we can say that the value of the item on the day it was stolen is Waajib as is the opinion of Imaam Yusuf)* **as the possibility existed** *(before the court case)* **to hand over its equivalent completely** *(Qadhaa-Kaamil could have been possible then and the value of the item would not be made Waajib on him then, as Qadhaa-Qaasir is only resorted to when Qadhaa-Kaamil is not possible)***.**

Qadhaa of that which has no equivalent

فَأَمَّا مَالاَ مِثْلَ لَه لاَ صُوْرَةً وَلاَ مَعْنىً لاَ يُمْكِنُ اِيْجَابُ الْقَضَاءِ فِيْهِ بِالْمِثْلِ وَلِهٰذَا الْمَعْنٰى قُلْنَا اِنَّ الْمَنَافِعَ لاَ تُضْمَنُ بِالاتْلاَفِ لانَّ اِيْجَابَ الضَّمَانِ بِالْمِثْلِ مُتَعَذَّرٌ وَ اِيْجَابَهُ بِالْعَيْنِ كَذَالِكَ لانَّ الْعَيْنَ لاَ تُمَاثِلُ الْمَنْفَعَةَ لاَ صُوْرَةً وَلاَ مَعْنىً كَمَا اِذَا غَصَبَ عَبْداً فَاسْتَخْدَمَه شَهْرًا أَوْ دَارًا فَسَكَنَ فِيْهَا شَهْراً ثُمَّ رَدَّ الْمَغْصُوْبَ اِلَى الْمَالِكِ لاَ يَجِبُ عَلَيْهِ ضَمَانُ الْمَنَافِعِ خِلاَفاً لِلشَّافِعِيِّ فَبَقِىَ الاثْمُ حُكْمًا لَه وَانْتَقَلَ جَزَاوُه اِلٰى دَارِ الاخِرَةِ

As far as that which has no equivalent, neither in composition nor meaning, it is not possible to make Qadhaa Waajib by its equivalent. And because of this *(that Qadhaa*

is not Waajib on that which has no equivalent) **we say that recompense for benefit** *(which was derived from an item)***will not be Waajib if the item is lost because** *(in this case)* **making recompense Waajib with its equivalent is not possible** *(since there is no equivalent for benefit, thus Qadhaa-Qaasir is not possible)* **and making the exact same** *(the equivalent value of the benefit)* **Waajib is also not possible because the exact same** *(equivalent value of the benefit)* **is neither the same as benefit in composition nor in meaning. For example if a person seizes a slave and takes service** *(derives benefit)* **from him for one month or** *(seizes)* **a house and stays in it** *(drives benefit from it)* **for a month and thereafter returns the seized items to its owner, recompensing** *(the owner)* **for the benefit derived will not be Waajib** *(according to Ahnaaf)* **as opposed to Imaam Shaafie** *(who says recompense is Waajib)*. **The sin of his crime will remain** *(the sin of deriving benefit from the slave unlawfully will remain)* **and its penalty will be decided in the Aakhirah.**

Rulings derived from the above

وَلِهٰذَا الْمَعْنٰى قُلْنَا لا تُضْمَنُ مَنَافِعُ الْبُضْعِ بِالشَّهَادَةِ الْبَاطِلَةِ عَلَى الطَّلاَقِ وَلاَ بِقَتْلِ مَنْكُوْحَةِ الْغَيْرِ وَلاَ بِالْوَطْئِ حَتّٰى لَوْ وَطِئَ زَوْجَةَ اِنْسَانٍ لاَ يَضْمَنُ لِلزَّوْجِ شَيْئاً

Based upon this *(that if an item has no equivalent, neither in composition or meaning, then it is not possible to make Qadhaa Waajib)* **we say that there is no recompense for the benefit of sexual relations** *(which was lost)* **by a false testimony of Talaaq** *(if two people falsely testify that he issued Talaaq to his wife, resulting in the Qaadhi separating them, and then later they confess to giving false testimony and the couple is reunited, then the witnesses will be punished for giving false testimony but recompense for the benefit which he lost from his wife during their period of separation will not be*

*made Waajib on them)***, nor** *(will recompense be made Waajib)* **for killing the wife of another** *(if a person kills another's wife then the Shar'ie punishment will be meted out but recompense for the benefit which he lost from his wife by her death will not be made Waajib on him)* **nor will recompense be taken for sexual relations, such that if a person commits adultery with another person wife then the adulterer will not recompense the husband for anything** *(as in all of the above cases there is no equivalent for the benefit of sexual relations such that it can be made Waajib, thus the perpetrator will be sinful and its penalty decided in the Aakhirah)***.**

An exception to the rule

اِلاَّ اِذَا وَرَدَ الشَّرْعُ بِالْمِثْلِ مَعْ اَنَّه لاَ يُمَاثِلُه صُوْرَةً وَلاَ مَعْنىً فَيكُوْنُ مِثْلاً لَه شَرْعاً فَيَجِبُ قَضَاؤه بِالْمِثْلِ الشَّرْعِيِّ وَ نَظِيْرُه مَا قُلْنَا اِنَّ الْفِدْيَةَ فِىْ حَقِّ الشَّيْخِ الْفَانِىْ مِثْلُ الصَّوْمِ وَالدِّيَةَ فِى الْقَتْلِ خَطَاءً مِثْلُ النَّفْسِ مَعَ أَنَّه لاَ مُشَابَهَةَ بَيْنَهُمَا

(If an item has no equivalent, neither in composition nor meaning, then it is not possible to make Qadhaa Waajib) **Except if the Shari'ah has stipulated an equivalent for it despite it having no equivalent in composition or meaning. Thus this will be considered its Shar'ie equivalent and it will be Waajib to fulfil it** *(the usurped right or benefit)* **with the Shar'ie equivalent.**

An example of this is what we say that Fidya in respect of a Sheikh Faani *(a person who is incapable of fasting)* **is the equivalent of fasting and the Diyyah** *(monetary compensation)* **in inadvertent murder is the same as a life** *(is the equivalent of the life taken)* **even though they** *((the missed fasts with Fidya and the life taken with Diyyah)* **have no similarity whatsoever.**

Lesson on Nahy

Types of Nahy

فصل فى النهى

اَلنَّهْيُ نَوْعَانِ نَهْىٌ عَنِ الْاَفْعَالِ الْحِسِّيَّةِ كَالزِّنَا وَشُرْبِ الْخَمْرِ وَالْكِذْبِ وَالظُّلْمِ وَ نَهْىٌ عَنِ التَّصَرُّفَاتِ الشَّرْعِيَّةِ كَالنَّهْيِ عَنِ الصَّوْمِ فِىْ يَوْمِ النَّحْرِ وَالصَّلٰوةِ فِى الْأَوْقَاتِ الْمَكْرُوْهَةِ وَبَيْعِ الدِّرْهَمِ بِالدِّرْهَمَيْنِ

Nahy *(is to prohibit or forbid something)* **is of two types; Nahy of Af'aalil Hissiyah** *(those acts, the meaning and evil of which was known before the coming of revelation)* **such as Zinaa** *(fornication)***, consuming wine, deceit, and oppression** *(the meaning of these acts was known even before the revelation of Shari'ah)*. *(The second type of Nahy is)* **Nahy of Tasarrufaatish Shari'ah** *(those acts, the meaning and evil of which only became known after revelation)* **such as the prohibition of fasting on the Day of Nahr** *(10 Dhul-Hijjah)***, Salaah in the forbidden times** *(sunrise, midday, sunset)***, and selling one dirham for two dirhams** *(which is termed as Riba and forbidden by Shari'ah)*.

The ruling of Nahy of Af'aalil Hissiyah

وَحُكْمُ النَّوْعِ الْأَوَّلِ اَنْ يَّكُوْنَ الْمَنْهِىُّ عَنْهُ هُوَ عَيْنُ مَا وَرَدَ عَلَيْهِ النَّهْىُ فَيَكُوْنُ عَيْنُهُ قَبِيْحًا فَلَا يَكُوْنُ مَشْرُوْعًا اَصْلًا

The ruling of the first category *(Nahy of Af'aalil Hissiyah)* **is that the prohibition is a result of the act itself, thus it** *(the*

prohibited act) **will be evil itself** *(Qabeeh-Li-Ainihi)* **and never permitted** *(in any circumstances, as ALLAAH Ta'ala will never permit or instruct evil and wickedness)***.**

The ruling of Nahy of Tasarrufaatish Shari'ah

وَحُكْمُ النَّوْعِ الثَّانِىْ اَنْ يَّكُوْنَ الْمَنْهِيُّ عَنْهُ غَيْرَ مَا اُضِيْفَ اِلَيْهِ النَّهْىُ فَيَكُوْنُ حَسَنًا بِنَفْسِهِ قَبِيْحًا لِغَيْرِهِ وَيَكُوْنُ الْمُبَاشِرُ مُرْتَكِبًا لِلْحَرَامِ لِغَيْرِهِ لَا لِنَفْسِهِ

The ruling of the second category *(Nahy of Tasarrufaatish Shari'ah)* **is that the prohibit is a result of exterior factors and not the act itself, thus it** *(the prohibited act)* **good in itself but evil because of exterior factors** *(Hasan bi-Nafsihi but Qabeeh Li-Ghairihi)***. The one who perpetrates such an act** *(an act falling under Nahy of Tasarrufaatish Shari'ah)* **perpetrates Haraam because of exterior factors** *(governing the prohibition at that time)* **and not because of the act itself.**

وَعَلٰى هٰذَا قَالَ اَصْحَابُنَا اَلنَّهْىُ عَنِ التَّصَرُّفَاتِ الشَّرْعِيَّةِ يَقْتَضِىْ تَقْرِيْرَهَا وَيُرَادُ بِذٰلِكَ اَنَّ التَّصَرُّفَاتِ بَعْدَ النَّهْيِ يَبْقٰى مَشْرُوْعاً كَمَا كَانَ لانَّه لَوْ لَمْ يَبْقَ مَشْرُوْعاً كَانَ الْعَبْدُعَاجِزًا عَنْ تَحْصِيْلِ الْمَشْرُوْعِ وَحِيْنَئِذٍ كَانَ ذٰلِكَ نَهْياً لِلْعَاجِزِ وَذٰلِكَ مِنَ الشَّارِعِ مَحَالٌ وَبِهِ فَارَقَ الاَفْعَالُ الْحِسِيَّةُ لانَّه لَوْكَانَ عَيْنُهَا قَبِيْحاً لا يُؤَدِّىْ ذٰلِكَ اِلَى نَهْيِ الْعَاجِزِ لانَّهُ بِهٰذَا الْوَصْفِ لاَ يَعْجِزُ الْعَبْدُ عَنِ الْفِعْلِ الْحِسِّيِ

Based upon this *(that Nahy of Tasarrufaatish Shari'ah is Hasan bi Nafsihi but Qabeeh Li-Ghairihi)* **our scholars** *(of the Hanafi school of thought)* **say that Nahy of Tasarrufaatish Shari'ah requires that it** *(the prohibited act)* **still be valid** *(after the prohibition in the same manner as before its prohibition)***. What is meant by this** *(that Nahy of Tasarrufaatish Shari'ah requires the prohibited act still to be valid)* **is that the act itself will still remain permissible after the prohibition as it was before being prohibited. The**

reason for this *(why it is permissible after the prohibition as it was before the prohibition)* **is because if it is not valid** *(after the prohibition)* **then a person would be incapable of performing it and in this case the prohibition would be directed towards one who is incapable of performing it** *(making the Nahy redundant as one can only be prohibited from something he is capable of doing)***, which is impossible for the one creating the laws of Shari'ah to do. This differentiates it** *(Tasarrufaatish Shari'ah)* **from Af'aalil Hissiyah because even if it is evil itself it would not necessitate the prohibition being directed towards one who is incapable of doing it, as an act being evil does not make one incapable of perpetrating it.**

Rulings derived from the above

وَ يَتَفَرَّعُ مِنْ هٰذَا حُكْمُ الْبَيْعِ الْفَاسِدِ وَالاجَارَةِ الْفَاسِدَةِ وَالنَّذْرِ بِصَوْمِ يَوْمِ النَّحْرِ وَجَمِيْعِ صُوَرِ التَّصَرُّفَاتِ الشَّرْعِيَّةِ مَعَ وُرُوْدِ النَّهْيِ عَنْهَا فَقُلْنَا اَلْبَيْعُ الْفَاسِدُ يُفِيْدُ الْمِلْكَ عِنْدَ الْقَبْضِ بِاِعْتِبَارِ اَنَّه بَيْعٌ وَيَجِبُ نَقْضُهُ بِاِعْتِبَارِكَوْنِهِ حَرَاماً لِغَيْرِهِ

Derived from this *(principle that Nahy of Tasarrufaatish Shari'ah requires the prohibited act still to be valid)* **is the ruling of invalid sales transactions** *(Bay'a Faasid)***, invalid rental transactions** *(Ijaarah Faasidah)***, vowing to fast on the day of Nahr** *(10 Dhul-Hijjah)***, and all those acts of Shari'ah** *(that are normally permitted)* **which have been prohibited** *(due to external factors)***. We say that an invalid sales transaction** *(Bay'a Faasid)* **will cause the transfer ownership to take place** *(from the seller to the buyer)* **when the buyer takes possession of the item because of it being a sales transaction which is Waajib to reverse because of it being Haraam due to external factors** *(and it can only be reversed if it was completed in the first place by ownership being transferred)***.**

A reply to an objection

وَهٰذَا بِخِلَافِ نِكَاحِ الْمُشْرِكَاتِ وَمَنْكُوْحَةِ الأبِ وَمُعْتَدَّةِ الْغَيْرِ وَمَنْكُوْحَتِهِ وَنِكَاحِ الْمَحَارِمِ وَالنِّكَاحِ بِغَيْرِ شُهُوْدٍ لانَّ مُوْجَبَ النِّكَاحِ حِلُّ التَصَرُّفِ وَمُوْجَبَ النَّهْيِ حُرْمَةُ التَّصَرُّفِ فَاسْتَحَالَ الْجَمْعُ بَيْنَهُمَا فَيُحْمَلُ النَّهْيُ عَلَى النَّفْيِ فَأَمَّا مُوْجَبُ الْبَيْعِ ثُبُوْتُ الْمِلْكِ وَمُوْجَبُ النَّهْيِ حُرْمَةُ التَّصَرُّفِ وَقَدْ أمْكَنَ الْجَمْعُ بَيْنَهُمَا بِاَنْ يَثْبُتَ الْمِلْكُ وَيَحْرُمَ التَّصَرُّفُ أَلَيْسَ انَّه لَوْ تَخَمَّرَ الْعَصِيْرُ فِىْ مِلْكِ الْمُسْلِمِ يَبْقٰى مِلْكُه فِيْهَا وَيَحْرُمُ التَّصَرُّفُ

(If someone were to object saying that marriage to a Mushrikah, father's wife, etc, which is prohibited by Shari'ah should also remain valid after the prohibition as in the case of Bay'a Faasid then we would say) **This** *(principle that Nahy of Tasarrufaatish Shari'ah requires the prohibited act still to be valid)* **is different from marrying a Mushrikah, fathers wife, another's wife still in Iddah, wife of another, one's blood relatives as well as marrying without witnesses because Nikaah dictates the permissibility of action** *(such as sexual relations, etc)* **and the Nahy dictates the impermissibility of action, making reconciliation between the two impossible** *(as both require the total opposite)***, so the Nahy** *(of the above mentioned Nikaah)* **will have the meaning of Nafee[1]. Whereas a sales transaction dictates that ownership be transferred** *(from the seller to the buyer)* **and the Nahy** *(of invalid sales transactions)* **dictates that action** *(transacting in the purchased item)* **is impermissible, and** *(in this scenario)* **reconciliation between the two is possible by establishing the transfer of ownership and transacting**

[1] The difference between Nahy and Nafee: In Nahy a person has the choice to either abstain or perpetrate the act, whereby he will be rewarded for abstaining and punished for perpetrating it; in Nafee a person does not have the choice to abstain or perpetrate it, but instead has to abstain from it absolutely.

being Haraam. *(A scenario similar to this whereby ownership remains but transacting is Haraam)***Is it not such that if grape juice ferments and turns into wine while in the possession of a Muslim it still remains in his ownership but transacting with it is Haraam.**

Rulings

وَعَلٰى هٰذَا قَالَ اَصْحَابُنَا اِذَا نَذَرَ بِصَوْمِ يَوْمِ النَّحْرِ وَأَيَّامِ التَّشْرِيْقِ يَصِحُّ نَذْرُه لانَّه نَذَرَ بِصَوْمٍ مَشْرُوْعٍ وَكَذٰلِكَ لَوْ نَذَرَ بِالصَّلٰوةِ فِى الأَوْقَاتِ الْمَكْرُوْهَةِ يَصِحُّ لانَّه نَذَرٌ بِعِبَادَةٍ مَشْرُوْعَةٍ لِمَا ذَكَرْنَا اَنَّ النَّهْىَ يُوْجِبُ بَقَاءَ التَّصَرُّفِ مَشْرُوْعاً وَلِهٰذَا قُلْنَا لَوْ شَرَعَ فِى النَّفْلِ فِىْ هٰذِهِ الأَوْقَاتِ لَزِمَه بِالشُّرُوْعِ وَ اِرْتِكَابُ الْحَرَامِ لَيْسَ بِلاَزِمٍ لِلُزُوْمِ الاِتْمَامِ فَاِنَّه لَوْ صَبَرَ حَتّٰى حَلَّتِ الصَّلٰوةُ بِاِرْتِفَاعِ الشَّمْسِ وَغُرُوْبِهَا وَدُلُوْكِهَا اَمْكَنَهُ الاتْمَامُ بِدُوْنِ الْكَرَاهَةِ وَبِهِ فَارَقَ صَوْمُ يَوْمِ الْعِيْدِ فَانَّه لَوْ شَرَعَ فِيْهِ لاَ يَلْزَمُهُ الاتْمَامُ عِنْدَ أَبِىْ حَنِيْفَةَ وَمُحَمَّدٍ رَحِمَهُمَا اللهُ تَعَالٰى لانَّ الاتْمَامَ لاَ يَنْفَكُّ عَنْ اِرْتِكَابِ الْحَرَامِ

Based upon this *(principle that Nahy of Tasarrufaatish Shari'ah requires the prohibited act still to be valid)* **our scholars** *(of the Hanafi school of thought)* **say that if a person makes o vow to fast on the Day of Nahr** *(10 Dhul-Hijjah)* **or the days of Tashreek** *(11, 12, 13 Dhul-Hijjah)* **then his vow is correct as it is a vow to fast, which is permitted in Shari'ah. In a similar manner** *(as vowing to fast on the Day of Nahr is)* **if a person makes a vow to perform Salaah in the prohibited times, then it will be correct as he has made a vow to perform an Ibaadat permitted by Shari'ah as we have mentioned previously that the Nahy requires the prohibited act still to be valid. As a result of this** *(that the act is still valid after it has been prohibited)* **we say that if a person begins performing Nafl Salaah in these** *(prohibited)* **times then it will be incumbent upon him** *(to perform this Salaah)* **by beginning it. Perpetration of Haraam will not**

become inevitable by making completion of the Nafl Salaah incumbent as he can wait until Salaah is permissible after sunrise, sunset or midday and then complete it. This *(not perpetrating Haraam in its completion)* **is what differentiates the fast on the day of Eid** *(from Nafl Salaah)* **as completion is not incumbent upon one who begins fasting** *(on the day of Eid)* **according to Imaam Abu Hanifah and Imaam Muhammed as completion** *(of the fast)* **will not be free from the perpetration of Haraam.**

وَمِنْ هٰذَا النَّوْعِ وَطْءُ الْحَائِضِ فَاِنَّ النَّهْىَ عَنْ قربَانِهَا بِاِعْتِبَارِ الأَذٰى لِقَوْلِهِ تَعَالٰى {يَسْئَلُوْنَكَ عَنِ الْمَحِيْضِ قُلْ هُوَ اَذًى فَاعْتَزِلُوا النِّسَآءَ فِى الْمَحِيْضِ وَلاَ تَقْرَبُوْهُنَّ حَتّٰى يَطْهُرْنَ} وَلِهٰذَا قُلْنَا يَتَرَتَّبُ الأَحْكَامُ عَلٰى هٰذَا الْوَطْئِ فَيَثْبُتُ بِهِ اِحْصَانُ الْوَاطِئُ وَتَحِلُّ الْمَرْأَةُ لِلزَّوْجِ الأَوَّلِ وَيَثْبُتُ بِهِ حُكْمُ الْمَهْرِ وَالعِدَةِ وَالنَّفَقَةِ وَ لَوْ اِمْتَنَعَتْ عَنِ التَّمْكِيْنِ لِاَجْلِ الصَّدَاقِ كَانَتْ نَاشِزَةً عِنْدَهُمَا فَلاَ تَسْتَحِقُّ النَّفْقَةَ

Also from this category *(of acts which are Qabeeh Li-Ghairihi)* **is sexual relations with one's wife while she is menstruating as the prohibition is a result of the** *(state of)* **impurity** *(she is in)* **in accordance with the verse,**

"They ask you *(O Muhammed)* **concerning menstruation. Say, "It is impure so leave** *(intercourse with)* **women during** *(their period of)* **menstruation and do not go unto them** *(do not have sexual relations with your wives)* **until they are cleansed** *(their menstrual cycle is complete)*.**"**

(Surah Baqarah: 222)

As a result of this *(that sexual relations with one's wife during menstruation is Qabeeh Li-Ghairihi)* **we say that the laws of Shari'ah will apply to this sexual relations** *(during menstruation)* **such that the marriage will be consummated, she will become Halaal for her first husband** *(Halalah will valid with this)*, **the laws of Mehr, Iddah, and maintenance will apply. If she refuses him permission for sexual**

intercourse *(after indulging in sexual relations while menstruating)* **because of her Mehr[1] then she will be regarded as Naashizah** *(disobedient)* **and she will not be entitled to maintenance** *(because of her disobedience)***.**

Prohibition does not prevent the laws from applying

وَ حُرْمَةُ الْفِعْلِ لَا تُنَافِيْ تَرَتُّبَ الْاَحْكَامِ كَطَلَاقِ الْحَائِضِ وَ الوُضُوْءِ بِالْمِيَاهِ الْمَغْصُوْبَةِ وَ الْاِصْطِيَادِ بِقَوْسٍ مَغْصُوْبَةٍ وَ الذَّبْحِ بِسِكِّيْنٍ مَغْصُوْبَةٍ وَ الصَّلٰوةِ فِى الْاَرْضِ الْمَغْصُوْبَةِ وَ الْبَيْعِ فِيْ وَقْتِ النِّدَاءِ فَاِنَّهُ يَتَرَتَّبُ الْحُكْمُ عَلٰى هٰذِهِ التَّصَرُّفَاتِ مَعَ اِشْتِمَالِهَا عَلَى الْحُرْمَةِ

An act being Haraam does not prevent its laws from applying such as issuing of Talaaq while a woman is menstruating *(even though it is Haraam to do so the Talaaq will still apply)***, performing Wudhu with illegally seized water** *(even though usage of that water is Haraam, the Wudhu will still be valid)***, hunting with an illegally seized bow** *(even though it is Haraam to use that bow the animal hunted with it will be Halaal when Tasmiyyah is recited)***, slaughtering with an illegally seized knife** *(even though usage of that knife is Haraam the animal slaughtered with it will be Halaal when Tasmiyyah is recited)***, performance of Salaah on illegally seized land** *(even though usage of that land is Haraam the Salaah performed on it will be valid)* **and trade during the time of Jumu'ah** *(even though trade is Haraam during this time, the transaction will still be valid)***, as the ruling of these actions will still apply despite them being prohibited.**

[1] The law is that a woman has the right to refuse her husband sexual intercourse until he hands over her Mehr. However if she indulges in intercourse with him once without demanding her Mehr then she does not have the right to deny him thereafter.

Rulings deduced from the above

وَ بِاِعْتِبَارِ هٰذَا الأَصْلِ قُلْنَا فِيْ قَوْلِهِ تَعَالٰى {وَلاَ تَقْبَلُوْا لَهُمْ شَهَادَةً أبَداً} اِنَّ الْفَاسِقَ مِنْ اَهْلِ الشَّهَادَةِ فَيَنْعَقِدُ النِّكَاحُ بِشَهَادِةِ الْفُسَّاقِ لانَّ النَّهْىَ عَنْ قُبُوْلِ الشَّهَادَةِ بِدُوْنِ الشَّهَادَةِ مَحَالٌ وَ اِنَّمَا لَمْ تُقْبَلْ شَهَادَتُهُمْ لِفَسَادٍ فِى الأَدَاءِ لاَلِعَدَمِ الشَّهَادَةِ أَصْلاً وَ عَلٰى هٰذَا لاَ يَجِبُ عَلَيْهِمُ اللِّعَانُ لانَّ ذٰلِكَ اَدَاءُ الشَّهَادَةِ وَلاَ اَدَاءَ مَعَ الْفِسْقِ

Based upon this principle *(that prohibition does not prevent the laws from applying and Nahy of Tasarrufaatish Shari'ah requires the prohibited act still to be valid))* **we say from the verse,**

{وَلاَ تَقْبَلُوْا لَهُمْ شَهَادَةً أبَداً}

"And never accept their testimony *(in a court hearing)* **ever again."** *(Surah Noor: 4)*

That a Faasiq *(open sinner)* **can be a witness and a Nikaah will be valid with the Fussaaq** *(open sinners)* **as witnesses as the Nahy of accepting their testimony is impossible without them being witnesses** *(in order for their testimony not to be accepted we will have to accept that they have the right to be a witness, only their testimony will not be accepted)***. The reason why we will not accept their testimony is because of its defect** *(there is doubt in their testimony because of their perpetration of sin)* **and not because they are not eligible as witnesses. Based upon this** *(that the testimony of open sinners is not accepted because of doubt in their testimony and not that they are not eligible as witnesses)* **Li'aan[1] will not be Waajib**

[1] When a husband accuses his wife of unfaithfulness and she denies it, the Qaadhi will order Li'aan to be performed whereby the husband will take an oath four times that he is true in what he says and then say the curse *(La'nat from which the word Li'aan is derived)* of ALLAAH be upon me if I am lying. Thereafter the wife will say four times that his accusation is false and then say the curse of ALLAAH be upon me if he is speaking the truth. The Qaadhi will then order them to be separated and a Talaaq Baa'inah will apply.

upon them, as this is to give testimony and one cannot give testimony if *(deemed)* **a Faasiq.**

Lesson on the method in which the implication of speech is recognised

If a word has the meaning of Haqeeqat and Majaaz

فصل فى تعريف طريق المراد بالنصوص
اِعْلَمْ اَنَّ لِمَعْرِفَةِ الْمُرَادِ بِالنُّصُوْصِ طُرُقاً مِنْهَا اَنَّ اللَّفْظَ اِذَا كَانَ حَقِيْقَةً لِمَعْنىً وَ مَجَازاً لآخَرَ فَالْحَقِيْقَةُ أَوْلٰى مِثَالُه مَا قَالَ عُلَمَائُنَا اَلْبِنْتُ الْمَخْلُوْقَةُ مِنْ مَآءِ الزِّنَا يَحْرُمُ عَلَى الزَّانِىْ نِكَاحُهَا وَقَالَ الشَّافِعِىُّ يَحِلُّ وَالصَّحِيْحُ مَا قُلْنَا لانَّهَا بِنْتُه حَقِيْقَةً فَتَدْخُلُ تَحْتَ قَوْلِهِ تَعَالى {حُرِّمَتْ عَلَيْكُمْ اُمَّهَاتُكُمْ وَبَنَاتُكُمْ} وَيَتَفَرَّعُ مِنْهُ الأحْكَامُ عَلَى الْمَذْهَبَيْنِ مِنْ حِلِّ الْوَطْئِ وَوُجُوْبِ الْمَهْرِ وَلُزُوْمِ النَّفَقَةِ وَجِرْيَانِ التَّوَارُثِ وَ وِلاَيَةِ الْمَنْعِ عَنِ الْخُرُوْجِ وَالْبُرُوْزِ

The method in which the implication of speech is recognised are many, of which *(the first method is)* **if a word has one meaning of Haqeeqat and another of Majaaz then it is better to practice on the meaning of Haqeeqat.**

An example of this is what our Ulama *(of the Hanafi School)* **say that an illegitimate daughter** *(conceived by Zinaa)* **is Haraam for the fornicator** *(illegitimate father)* **to marry, whereas Imaam Shaafie says it is permissible** *(for the father to marry his illegitimate daughter)***. The correct view is what we** *(the scholars of the Hanafi Madhab)* **have said because she is his daughter in reality and will therefore be included under the** *(prohibition of the)* **verse,**

{حُرِّمَتْ عَلَيْكُمْ اُمَّهَاتُكُمْ وَبَنَاتُكُمْ}

"Forbidden for you are *(it is Haraam for you to marry)* **your mothers** *(and your grandmothers)***, your daughters (***and your granddaughters)***."** *(Surah Nisaa: 23)*

(Since an illegitimate daughter is still one's daughter in reality it would be Haraam to marry her.) **Based upon the verdict, rulings are derived according to both Madhaahib** *(as a result of the opposing verdicts of the Hanafi Madhab and Shaafie Madhab the rulings differ)* **with regards to permissibility of sexual relations** *(The Hanafi scholars say it is impermissible because the Nikaah is invalid on account of her being his daughter whereas Imaam Shaafie says that since the Nikaah is valid, sexual relations will be permissible)***, incumbency of Mehr and maintenance** *(the Hanafi scholars say that Mehr and maintenance is not Waajib as the Nikaah is invalid on account of her being his daughter whereas Imaam Shaafie says it is Waajib as the Nikaah is valid)***, the right to inherit** *(Imaam Shaafie says she will inherit as she is his wife whereas Imaam Abu Hanifah says that she will not inherit because she is not his wife as the Nikaah was invalid on account of her being his daughter)* **and the right to prevent her from leaving the home** *(Imaam Shaafie says he will have the right to do so as she is his wife whereas Imaam Abu Hanifah says that he will not have the right as the Nikaah is invalid on account of her being his daughter)***.**

If one meaning requires Takhsees and not the other

وَمِنْهَا أَنَّ أَحَدَ الْمُحْتَمَلَيْنِ اِذَا أَوْجَبَ تَخْصِيْصًا فِى النَّصِّ دُوْنَ الآخَرِ فَالْحَمْلُ عَلٰى مَالاَيَسْتَلْزِمُ التَّخْصِيْصَ أَوْلٰى مِثَالُه فِىْ قَوْلِهِ تَعَالٰى {اَوْلاَ مَسْتُمُ النِّسَآءَ} فَالْمُلاَمَسَةُ لَوْحُمِلَتْ عَلَى الْوِقَاعِ كَانَ النَّصُّ مَعْمُوْلاً بِهِ فِىْ جَمِيْعِ صُوَرِ وُجُوْدِهِ وَ لَوْ حُمِلَتْ عَلَى الْمَسِّ بِالْيَدِكَانَ النَّصُّ مَخْصُوْصاً بِهِ فِىْ كَثِيْرٍ مِنَ الصُّوَرِ فَاِنَّ مَسَّ الْمَحَارِمِ وَالطِّفْلَةِ الصَّغِيْرَةِ جِدًّاغَيْرُ

نَاقِضٍ لِلْوُضُوْءِ فِىْ اَصَحِّ قَوْلَيِ الشَّافِعِيِّ وَيَتَفَرَّعُ مِنْهُ الأَحْكَامُ عَلَى الْمَذْهَبَيْنِ مِنْ اِبَاحَةِ الصَّلٰوةِ وَمَسِّ الْمُصْحَفِ وَ دُخُوْلِ الْمَسْجِدِ وَصِحَّةِ الامَامَةِ وَ لُزُوْمِ التَّيَمُّمِ عِنْدَ عَدَمِ الْمَاءِ وَتَذَكُّرِ الْمَسِّ فِىْ اَثْنَاءِ الصَّلٰوةِ

(The second method is) **If a word which has two possible meanings, with one requiring Takhsees** *(a part of its constituents to be excluded)* **and not the other then it is better to use the meaning of that which does not require Takhsees.**

An example of this is the verse,

{اَوْلاَ مَسْتُمُ النِّسَآءَ}

"Or from touching *(cohabiting)* **your wives."** *(Surah Nisaa: 43)*

If the words 'Malaamasah' *(touching)* **is said to refer to sexual relations** *(cohabiting)* **then the verse can be practiced upon in all instances it occurs but if we say 'Malaamasah' refers to touching by hand then many instances will be excluded** *(from this ruling)* **as touching one's female blood relatives and infant girls will not break Wudhu according to the more accurate view of Imaam Shaafie .**

Based upon the verdict, rulings are derived according to both Madhaahib *(as a result of the opposing verdicts of the Hanafi Madhab and Shaafie Madhab the rulings differ)* **with regards to permissibility***(after having touched a woman by hand)* **of Salaah** *(Imaam Abu Hanifah says that Salaah is permissible as he is still in a state of Wudhu whereas Imaam Shaafie says it is impermissible as touching a woman by hand breaks Wudhu)***, touching the Quraan** *(Imaam Abu Hanifah says that it is permissible as he is still in a state of Wudhu whereas Imaam Shaafie says it is impermissible as touching a woman by hand breaks Wudhu)***,entering the Masjid***(Imaam Abu Hanifah says that entering the Masjid will be permissible without any Karaahat as he is still in a state of Wudhu whereas*

*Imaam Shaafie says it will be Makruh to enter the Masjid as touching a woman by hand breaks Wudhu)***, permissibility of Imaamat** *(Imaam Abu Hanifah says that it will be permissible for him to be Imaam as he is still in a state of Wudhu whereas Imaam Shaafie says it is impermissible as touching a woman by hand breaks Wudhu)***, compulsion of Tayammum if water is not available** *(Imam Abu Hanifah says that Tayammum will not be compulsory on him if water is not available as he is still in a state of Wudhu whereas Imaam Shaafie says that Tayammum will be compulsory on him if water is not available as his Wudhu has broken by touching a woman by hand)* **and remembering touching the woman during Salaah** *(if a person remembers during Salaah or after Salaah that he touched a woman by hand earlier the according to Imaam Shaafie he needs to perform Wudhu again and repeat that Salaah as Wudhu breaks when touching a woman by hand whereas Imaam Abu Hanifah says since wudhu does not break by touching there is no need to repeat the Salaah)***.**

If a word has two different forms of recitation

وَمِنْهَا أَنَّ النَّصَّ اِذَا قُرِئَ بِقِرَائَتَيْنِ أَوْ رُوِىَ بِرَوَايَتَيْنِ كَانَ الْعَمَلُ بِهِ عَلٰى وَجْهٍ يَكُوْنُ عَمَلاً بِالْوَجْهَيْنِ اَوْلٰى مِثَالُه فِىْ قَوْلِهِ تَعَالٰى {وَاَرْجُلَكُمْ} قُرِئَ بِالنَّصْبِ عَطْفاً عَلَى الْمَغْسُوْلِ وَبِالْخَفْضِ عَطْفاً عَلَى الْمَمْسُوْحِ فَحُمِلَتْ قِرَاءَةُ الْخَفْضِ عَلٰى حَالَةِ التَّخَفُّفِ وَقِرَاءَةُ النَّصْبِ عَلٰى حَالَةِ عَدَمِ التَّخَفُّفِ وَبِاعْتِبَارِ هٰذَا الْمَعْنٰى قَالَ الْبَعْضُ جَوَازُ الْمَسْحِ ثَبَتَ بِالْكِتَابِ

If a word is recited in two different forms of recitation or *(a Hadeeth)* **reported in two different chains of narration** *(such that they differ slightly)* **then practicing on it in a manner whereby both recitations or chains of narration is practised upon is best.**

An example of this is the verse,

"*(and wash)* **your feet up to** *(and including)* **your ankles."**
(Surah Maa'idah: 6)

The word "feet" is reported *(in one form of recitation)* **with a Nasab (** أَرْجُلَكُمْ**) attached to Ghusal** *(meaning one should wash one's feet up to the ankles)* **and** *(in another recitation it is reported)* **with a Kasra (**أَرْجُلِكُمْ**) attached to Masah** *(meaning that one should make Masah of one's feet up to the ankles)***. Thus the recitation with a Kasra applies when one is wearing Khuffain** *(leather socks)* **and the recitation with Nasab applies when one is not wearing Khuffain** *(and in this manner we practice on both forms of recitation)***. As a result of this** *(interpretation)* **some** *(scholars)* **have said that the permissibility of Masah** *(on leather socks)* **is proven by the Quraan.**

Example Two

وَكَذٰلِكَ قَوْلُه تَعَالٰى {حَتّٰى يَطْهُرْنَ} قُرِئَ بِالتَّشْدِيْدِ وَ التَّخْفِيْفِ فَيُعْمَلُ بِقِرَاءَةِ التَّخْفِيْفِ فِيْمَا اِذَا كَانَ اَيَّامُهَا دُوْنَ الْعَشَرَةِ وَ بِقِرَاءَةِ التَّشْدِيْدِ فِيْمَا اِذَا كَانَ أَيَّامُهَا دُوْنَ الْعَشَرَةِ

In a similar manner *(as the example mentioned above)* **the verse,**

{حَتّٰى يَطْهُرْنَ}

"*(and do not have sexual relations with your menstruating wives)* **until they are cleansed."** *(Surah Baqarah: 222)*

The word "Cleansed" is recited with a Tashdeed (يَطَّهَّرْنَ **) and a Saakin[1](** يَطْهُرْنَ **), thus we will act upon the recitation**

[1] The recitation with Tashdeed implies complete purification and would mean that sexual relations with one's wife after her period of menstruation is only permissible after she performs Ghusal and the recitation with Saakin merely implies to become purified and would mean that

with Saakin if her period of menstruation was ten days *(making sexual relations permissible with her even if she has not yet performed Ghusal)* **and we will act upon the recitation with Tashdeed if her period of menstruation was less than ten days** *(such that sexual relations will only be permissible after she performs Ghusal)***.**

Rulings derived from the above

وَعَلٰى هٰذَا قَالَ أَصْحَابُنَا اِذَا انْقَطَعَ دَمُ الحَيْضِ لاقَلَّ مِنْ عَشَرَةِ أَيَّامٍ لَمْ يَجُزْ وَطْئُ الْحَائِضِ حَتّٰى تَغْتَسِلَ لانَّ كَمَالَ الطَّهَارَةِ يَثْبُتُ بِالْاِغْتِسَالِ وَلَوْ اِنْقَطَعَ دَمُهَا لِعَشَرَةِ اَيَّامٍ جَازَ وَطْئُهَا قَبْلَ الْغُسْلِ لِاَنَّ مُطْلَقَ الطَّهَارَةِ ثَبَتَ بِاِنْقِطَاعِ الدَّمِ وَلِهٰذَا قُلْنَا اِذَا انْقَطَعَ دَمُ الْحَيْضِ لِعَشَرَةِ اَيَّامٍ فِىْ آخِرِ وَقْتِ الصَّلٰوةِ تَلْزَمُهَا فَرِيْضَةُ الْوَقْتِ وَاِنْ لَمْ يَبْقَ مِنَ الْوَقْتِ مِقْدَارَ مَا تَغْتَسِلُ فِيْهِ وَلَو انْقَطَعَ دَمُهَا لِاَقَلَّ مِنْ عَشَرَةِ اَيَّامٍ فِىْ آخِرِ وَقْتِ الصَّلٰوةِ اِنْ بَقِىَ مِنَ الْوَقْتِ مِقْدَارَ مَا تَغْتَسِلُ فِيْهِ وَ تُحْرِمُ لِلصَّلٰوةِ لَزِمَتْهَا الْفَرِيْضَةُ وَ اِلاَّ فَلاَ

Based upon this *(that we will act upon the recitation with Saakin if her period of menstruation was ten days and we will act upon the recitation with Tashdeed if her period of menstruation was less than ten days)* **our scholars** *(of the Hanafi Madhab)* **say that if her period of menstruation is less than ten days, sexual relations will not be permissible unless she performs Ghusal because complete purification is attained with Ghusal; and if her period of menstruation is ten days then sexual relations will be permissible without Ghusal because coming pure is established when her period** *(of menstruation)* **ends.**

Because of this we say that if her period of menstruation is ten days and ends in the last portion of the Salaah time, the

sexual relations with one's wife after her period of menstruation is permissible even if she has not yet performed Ghusal.

Salaah *(of that time)* **will be Fardh upon her even if there is not sufficient time to perform Ghusal** *(as she has attained purity in accordance with the recitation with Saakin)* **but if her period of menstruation is less than ten days and ends in the last portion of Salaah time then if there is sufficient time for her to perform Ghusal and say the Takbeer Tahreemah the Salaah will be Fardh upon her, if not** *(if there is not sufficient time to perform Ghusal and say the Takbeer Tahreemah)* **then it** *(the Salaah of that time)* **will not** *(be Fardh on her)***.**

Weak methods in which the implication of speech is recognised

ثُمَّ نَذْكُرُ طُرُقاً مِنَ التَّمَسُّكَاتِ الضَّعِيْفَةِ لِيَكُوْنَ ذٰلِكَ تَنْبِيْهاً عَلٰى مَوَاضِعِ الْخَلَلِ فِىْ هٰذَا النَّوْعِ مِنْهَا أَنَّ التَّمَسُّكَ بِمَارُوِىَ عَنِ النَّبِىِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّه قَاءَ فَلَمْ يَتَوَضَّأْ لِإِثْبَاتِ اَنَّ الْقَيْئَ غَيْرُ نَاقِض ضَعِيْفٌ لِاَنَّ الْاَثَرَ يَدُلُّ عَلٰى اَنَّ الْقَئْ لَاَ يُوْجِبُ الْوُضُوْءَ فِي الْحَالِ وَلاً خِلاَفَ فِيْهِ وَ اِنَّمَا الْخِلاَفُ فِىْ كَوْنِهِ نَاقِضاً

We will now discuss weak methods *(i.e. it is considered weak according to the Hanafi school of thought)* **in which the implication of speech was recognised so that the flaws of this method of deduction can be recognised.**

(The first example is) **Deducing from what has been reported that Rasulullaah vomited and did not perform Wudhu that vomiting does not break Wudhu is weak because the narration** *(only)* **establishes that Wudhu is not Waajib immediately, in which there is no difference of opinion, but the difference of opinion is in whether vomiting breaks Wudhu** *(and this narration does not establish that it does not break Wudhu as it is possible that it did break Wudhu and Rasulullaah made Wudhu much later)***.**

Example Two

وَكَذٰلِكَ التَّمَسُّكُ بِقَوْلِهِ تَعَالٰى حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ لِإِثْبَاتِ فَسَادِ الْمَاءِ بِمَوْتِ الذُّبَابِ ضَعِيْفٌ لِاَنَّ النَّصَّ يُثْبِتُ حُرْمَةَ الْمَيْتَةِ وَلاَ خِلاَفَ فِيْهِ وَاِنَّمَا الْخِلاَفُ فِىْ فَسَادِ الْمَاءِ

In a similar manner *(to the weak deduction mentioned above)* **is deducing from the verse,**

"Forbidden for you *(to eat)* **is Mayta** *(carrion)***."**
(Surah Maa'idah: 3)

that water becomes impure by a fly dying in it is weak because the verse *(only)* **establishes that Mayta is Haraam, in which there is no difference of opinion, but the difference of opinion is in the impurity of water** *(which is not proven by this verse)***.**

Example Three

وَكذٰلكَ التَّمَسُّكُ بقوْلهِ عليه السلامُ حُتِّيْهِ ثمَّ اُقْرُصِيْهِ ثُمَّ اغْسِلِيْهِ بِالْمَاءِ لاثْبَاتِ اَنَّ الْخَلَّ لاَ يُزِيْلُ النَّجَسَ ضَعِيْفٌ لانَّ الْخَبَرَ يَقْتَضِىْ وُجُوْبَ غَسْلِ الدَّمِ بِالْمَآءِ فَيَتَقَيَّدُ بِحَالِ وُجُوْدِ الدَّمِ عَلٰى الْمَحَلِّ وَلاَ خِلاَفَ فِيْهِ وَ اِنَّمَا الْخِلاَفُ فِىْ طَهَارَةِ الْمَحَلِّ بَعْدَ زَوَالِ الدَّمِ بِالْخَلِّ

In a similar manner *(to the weak deduction mentioned above)* **is deducing from the Hadeeth of Rasulullaah , "Rub it** *(the clothes soiled with blood of menstruation)***, then scratch it, then wash it with water" that vinegar does not purify impurity is weak because the Hadeeth** *(only)* **establishes**

that it is Waajib to wash the blood with water and applies as long as the blood still remains on the item, in which there is no difference of opinion. The difference of opinion is whether the item will be purified after the blood is removed with vinegar *(regarding which the Hadeeth makes no mention)***.**

Example Four

وَكَذٰلِكَ التَّمَسُّكُ بِقَوْلِهِ عَلَيْهِ السَّلاَمُ فِىْ أَرْبَعِيْنَ شَاةً شَاةٌ لاثْبَاتِ عَدَمِ جَوَازِ دَفْعِ الْقِيْمَةِ ضَعِيْفٌ لانَّه يَقْتَضِىْ وُجُوْبَ الشَّاةِ وَلاَ خِلاَفَ فِيْهِ وَ اِنَّمَا الْخِلاَفُ فِىْ سُقُوْطِ الْوَاجِبِ بِأَدَاءِ الْقِيْمَةِ

In a similar manner *(to the weak deduction mentioned above)* **is deducing from the Hadeeth of Rasulullaah ﷺ, "For every forty sheep** *(owned)***, a sheep** *(is waajib as Zakaat)***" that it is impermissible to give the price of the sheep** *(as Zakaat)* **is weak because it** *(only)* **establishes that a sheep is Waajib** *(as Zakaat for every forty sheep one owns)* **in which there is no difference of opinion, but he difference of opinion is in whether one will be absolved of the Waajib** *(will the Zakaat be fulfilled)* **if the price is given** *(regarding which the Hadeeth makes no mention)***.**

Example Five

وَكَذٰلِكَ التَّمَسُّكُ بِقَوْلِهِ تَعَالٰى {وَاَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلّٰهِ} لاثْبَاتِ وُجُوْبِ الْعُمْرَةِ اِبْتِدَاءً ضَعِيْفٌ لانَّ النَّصَّ يَقْتَضِىْ وُجُوْبَ الاتْمَامِ وَكَذٰلِكَ اِنَّمَا يَكُوْنُ بَعْدَ الشُّرُوْعِ وَلاَ خِلاَفَ فِيْهِ وَ اِنَّمَا الْخِلاَفُ فِىْ وُجُوْبِهَا اِبْتِدَاءً

In a similar manner *(to the weak deduction mentioned above)* **is deducing from the verse,**

"Complete the Hajj and Umrah for *(the pleasure of)* **ALLAAH"** *(Surah Baqarah: 196)*

That Umrah is Waajib from the beginning *(that it is Waajib upon a person to perform Umrah once in his lifetime)* **is weak because this verse** *(only)* **establishes that it is Waajib to complete Umrah which only applies after one has begun** *(performing Umrah)***, in which there is no difference of opinion, the difference is in whether it is Waajib from the beginning** *(regarding which the Hadeeth makes no mention)***.**

Example six

وَكَذٰلِكَ التَّمَسُّكُ بِقَوْلِهِ عَلَيْهِ السَّلاَمِ: لاَ تَبِيْعُوا الدِّرْهَمَ بِالدِّرْهَمَيْنِ وَلاَ الصَّاعَ بِالصَّاعَيْنِ لاِثْبَاتِ اَنَّ الْبَيْعَ الْفَاسِدَ لاَ يُفِيْدُ الْمِلْكَ ضَعِيْفٌ لاَنَّ النَّصَّ يَقْتَضِىْ تَحْرِيْمَ الْبَيْعِ الْفَاسِدِ وَلاَ خِلاَفَ فَيْهِ وَ اِنَّمَا الْخِلاَفُ فِىْ ثُبُوْتِ الْمِلْكِ وَعَدَمِهِ

In a similar manner *(to the weak deduction mentioned above)* **deducing from the Hadeeth of Rasulullaah, "Do not sell one dirham for two dirhams or** *(the contents of)* **one Sa'a** *(measuring utensil)* **for** *(the contents of)* **two Sa'a that Bay'a Faasid** *(invalid sales transaction)* **does not cause transfer of ownership is weak because the Hadeeth** *(only)* **establishes the prohibition of Bay'a Faasid, in which there is no difference of opinion, whereas the difference of opinion is in whether ownership is established** *(for the buyer)* **or not** *(regarding which the Hadeeth makes no mention)***.**

Example Seven

وَكَذٰلِكَ التَّمَسُّكُ بِقَوْلِهِ عَلَيْهِ السَّلاَمِ اَلاَ لاَ تَصُوْمُوْا فِيْ هٰذِهِ الأَيَّامِ فَاِنَّهَا اَيَّامُ اَكْلٍ وَ شُرْبٍ وَ بِعَالٍ لاثْبَاتِ اَنَّ النَّذْرَ بِصَوْمِ يَوْمِ النَّحْرِ لاَيَصِحُّ ضَعِيْفٌ لاَنَّ النَّصَّ يَقْتَضِيْ حُرْمَةَ الْفِعْلِ وَلاَ خِلاَفَ فِيْ كَوْنِهِ حَرَاماً

In a similar manner *(to the weak deduction mentioned above)* **deducing from the Hadeeth of Rasulullaah , "Verily, do not fast in these days** *(10, 11, 12, 13 Dhul-Hijjah)* **as they are days of eating, drinking and intimacy" that making a vow to fast on the day of Nahr** *(10 Dhul-Hijjah)* **is invalid, is weak because the verse** *(only)* **establishes prohibition of fasting, in which there is no difference of opinion, whereas the difference of opinion is whether the laws** *(which govern that act)* **will still apply even though an act is Haraam** *(regarding which the Hadeeth makes no mention)***.**

وَ اِنَّمَا الْخِلاَفُ فِيْ اِفَادَةِ الأَحْكَامِ مَعَ كَوْنِهِ حَرَاماً وَ حُرْمَةُ الْفِعْلِ لاَ تُنَافِيْ تَرَتُّبَ الأَحْكَامِ فَاِنَّ الأَبَ لَو اسْتَوْلَدَ جَارِيَةَ ابْنِهِ يَكُوْنُ حَرَاماً وَيَثْبُتُ بِهِ الْمِلْكُ لِلأَبِ وَ لَوْ ذَبَحَ شَاةً بِسِكِّيْنٍ مَغْصُوْبَةٍ يَكُوْنُ حَرَاماً وَ يَحِلُّ الْمَذْبُوْحُ وَ لَوْ غَسَلَ الثَّوْبَ النَّجِسَ بِمَاءٍ مَغْصُوْبٍ يَكُوْنُ حَرَاماً وَ يَطْهرُ بِهِ الثَّوْبُ وَ لَوْ وَطِئَ اِمْرَأَةً فِيْ حَالَةِ الْحَيْضِ يَكُوْنُ حَرَاماً وَيَثْبُتُ بِهِ اِحْصَانُ الْوَاطِئِ وَيَثْبُتُ الْحِلُّ لِلزَّوْجِ الأَوَّلِ

An act being Haraam does not prevent the laws *(which govern that act)* **from applying.** *(For example)* **If a father impregnates the female slave of his son, the act is Haraam but ownership will be established for the father** *(and he will pay the price of the slave to his son)***.** *(Another example is)* **If a person slaughters a sheep with an unlawfully seized knife then using the knife will be Haraam but the animal will be Halaal** *(if he recited Tasmiyyah when slaughtering)***.** *(Another example is)* **If a person washes his clothes with unlawfully seized water then the using the knife will be Haraam but the clothes will be purified.** *(Another example is)* **If a person has sexual relations with his wife while she is menstruating,**

then the act will be Haraam but *(the laws related to sexual relations will still apply such as)* **the marriage will be considered as consummated and permissibility** *(to marry)* **will be established for the first husband** *(who gave her three Talaaq)***.**

Lesson on Huroof-Ma'aani

The letter 'و'

فصل فى تقرير الحروف المعانى

اَلْوَاوُ لِلْجَمْعِ الْمُطْلَقِ وَقِيْلَ اِنَّ الشَّافِعِيَّ جَعَلَهُ لِلتَّرْتِيْبِ وَعَلٰى هٰذَا أَوْجَبَ التَّرْتِيْبَ فِىْ بَابِ الْوُضُوْءِ

The letter 'و'is used for Mutlaq Jam'a *(to link or connect various words together to the same ruling without any sequence or order)* **and it has been said that Imaam Shaafieعليه الرحمةsays it denotes Tarteeb** *(sequence, which would mean that the sequence in which the word were connected needs to be observed)* **because of which Tarteeb in Wudhu** *(to make wudhu in the same sequence as mentioned in the Quraan)* **is Waajib** *(according to Imaam Shaafie as opposed to Imaam Abu Hanifah who says it is Sunnat)***.**

Rulings derived from the above

قَالَ عُلَمَاوُنَا اِذَا قَالَ لامْرَأتِهِ اِنْ كَلَّمْتِ زَيْداً وَعَمْروًا فَأنْتِ طَالِقٌ فَكَلَّمْتْ عَمْروًا ثُمَّ زَيْداً طُلِّقَتْ وَلاَ يَشْتَرِطُ فِيْهِ مَعْنَى التَّرْتِيْبِ وَ الْمُقَارَنَةِ وَ لَوْ قَالَ اِنْ دَخَلْتِ هٰذِهِ الدَّارَ وَ هٰذِهِ الدَّارَ فَاَنْتِ طَالِقٌ فَدَخَلَتِ الثَّانِيَةَ ثُمَّ دَخَلَتِ الاَوْلٰى طُلِّقَتْ قَالَ مُحَمَّدٌ اِذَا قَالَ اِنْ دَخَلْتِ الدَّارَ وَ أنْتِ طَالِقٌ تُطَلَّقُ فِى الْحَالِ وَلَوْ اِقْتَضٰى ذٰلِكَ تَرْتِيْباً لَتَرَتَّبَ الطَلاَ قُ بِهِ عَلَى الدُّخُوْلِ وَيَكُوْنُ ذٰلِكَ تَعْلِيْقاً لاَ تَنْجِيْزاً

Our Ulama *(of the Hanafi Madhab)* **say that if a person tells his wife, "If you talk to Zaid <u>and</u> Amr then you are divorced" and she talks to Amr first then to Zaid, the Talaaq will apply and the meaning of Tarteeb** *(sequence)* **Maqaaranah** *(simultaneity)* **will not apply** *(thus the Talaaq will apply whether she talks to Amr first then Zaid and even if she talks to them separately and not together simultaneously)***.** *(Similarly)* **If a person says** *(to his wife)* **"If you enter this house <u>and</u> this house, then you are divorced" and she then enters the second house** *(which he indicated)* **first and then the first house, the Talaaq will apply** *(regardless of which house was enters first and even if it they were not entered consecutively)***. Imaam Muhammed says that if a person says** *(to his wife)* **"If you enter this house <u>and</u> you are divorced" then a Talaaq will apply immediately** *(even if she*

does not enter the house). **If the letter 'و' denoted Tarteeb then the Talaaq would depend on entrance** *(into that house)* **making it conditional and not immediate** *(and no one is of the opinion that it has been used here to denote condition)*.

The letter 'و' sometimes denotes Haal

وَقَدْ يَكُوْنُ الْوَاوُ لِلْحَالِ فَتَجْمَعُ بَيْنَ الْحَالِ وَذِى الْحَالِ وَ حِيْنَئِذٍ تُفِيْدُ مَعْنَى الشَّرْطِ مِثَالُهُ مَا قَالَ مُحَمَّدٌ فِى الْمَأْذُوْنِ اِذَا قَالَ لِعَبْدِهِ اَدِّ اِلَىَّ اَلْفاً وَاَنْتَ حُرٌّ يَكُوْنُ الأَدَاءُ شَرْطاً لِلْحُرِّيَةِ وَقَالَ مُحَمَّدٌ فِى السِّيَرِ الْكَبِيْرِ اِذَا قَالَ الامَامُ لِلْكُفَّارِ اِفْتَحُوا الْبَابَ وَ اَنْتُمْ اٰمِنُوْنَ لاَ يَأْمَنُوْنَ بِدُوْنِ الْفَتْحِ وَ لَوْ قَالَ لِلْحَرْبِىِّ اَنْزِلْ وَ أَنْتَ اٰمِنٌ لاَ يَأْمَنُ بِدُوْنِ النُّزُوْلِ

Sometimes the letter 'و' denotes Haal *(situation or state)* **such that it** *(the letter 'و')* **will combine the Haal** *(situation or state)* **with the Dhil Haal** *(the person or object whose situation or state is being described)* **and then** *(when the 'و' denotes Haal)* **it will support the meaning of condition** *(in this case the 'و' will denote that the subsequent clause is a precondition for the application of the ruling)*. **An example of this** *(where 'و' denotes Haal and will support the meaning of condition)* **is a Ma'thoon** *(a slave who has been given permission to trade by his master)* **when his master says to him, "Pay me one thousand <u>and</u> you are free". Payment of the thousand will be a condition for his freedom** *(and he will not be set free immediately)*.

Imaam Muhammed has written in 'As-Siyarul Kabeer', "If the leader of the Muslims says to the Kuffaar, "Open the door <u>and</u> you are granted sanctuary", they will not be granted sanctuary without opening the door *(as opening the door is a condition for sanctuary)*. **If he says to an enemy combatant, "Come down <u>and</u> you are granted sanctuary",**

he will only be granted sanctuary he comes down *(as coming down is a condition for sanctuary)***.**

Two conditions for the letter 'و' to denote Haal

وَ اِنَّمَا تُحْمَلُ الْوَاوُ عَلَى الْحَالِ بِطَرِيْقِ الْمَجَازِ فَلاَ بُدَّ مِنْ اِحْتِمَالِ اللَّفْظِ ذٰلِكَ وَ قِيَامُ الدَّلاَلَةِ عَلٰى ثُبُوْتِهِ كَمَا فِىْ قَوْلِ الْمَوْلٰى لِعَبْدِهِ اَدِّ اِلَىَّ اَلْفاً وَ اَنْتَ حُرٌّ فَاِنَّ الْحُرِّيَّةَ يَتَحَقَّقُ حَالَ الأدَاءِ وَقَامَتِ الدَّلاَلَةُ عَلٰى ذٰلِكَ فَاِنَّ الْمَوْلٰى لاَ يَسْتَوْجِبُ عَلٰى عَبْدِهِ مَالاً مَعَ قِيَامِ الرِّقِّ فِيْهِ وَقَدْ صَحَّ التَّعْلِيْقُ بِهِ فَحُمِلَ عَلَيْهِ

The letter 'و' denotes Haal as Majaaz *(i.e. it is not the literal meaning of'و')* **thus it is necessary** *(two conditions are necessary)* **that the word must support the meaning** *(the meaning of Haal)* **and proof must exist that the meaning of Majaaz is implied, as in the statement of the master to his servant, "Pay me one thousand <u>and</u> you are free" where freedom is acquired when payment is made.** *(The two conditions are present here as)* **Proof exists that Majaaz is implied as the master cannot make a thousand incumbent upon the slave while he is in his ownership** *(which proves that it is a condition for his freedom)* **and attachment to it is correct** *(it is correct to attach or link his freedom to the payment of one thousand)***, thus it** *(the meaning of Haal)* **will be conferred to the statement.**

وَلَوْ قَالَ اَنْتِ طَالِقٌ وَاَنْتِ مَرِيْضَةٌ اَوْ مُصَلِّيَةٌ تُطَلَّقُ فِى الْحَالِ وَلَوْ نَوَى التَّعْلِيْقَ صَحَّتْ نِيَّتُهُ فِيْمَا بَيْنَهُ وَ بَيْنَ اللهِ تَعَالٰى لانَّ اللَّفْظَ وَ اِنْ كَانَ يَحْتَمِلُ مَعْنَى الْحَالِ اِلاَّ اَنَّ الظَّاهِرَ خِلافُهُ وَ اِذَا تَأَيَّدَ ذٰلِكَ بِقَصْدِهِ ثَبَتَ

(An example where these two conditions are not met and the literal meaning of 'و' will be implied is) **If a person** *(tells his wife)***, "You are divorced <u>and</u> you are sick or** *(he tells her, "You are divorced)* **and you are performing Salaah" then**

the Talaaq will apply immediately *(and the meaning of Haal will not be implied here)*. **If he had the intention of attachment** *(whereby he intended to attach or link the Talaaq to her getting sick or performance of Salaah)* **then his intention will be correct between him and ALLAAH** *(but since Shar'ie rulings are based on what is apparent, we will rule that Talaaq was issued immediately as is apparent).* **The reason for this** *(ruling that Talaaq was issued immediately)* **is that even though the word does support that meaning** *(Talaaq can be attached to performance of Salaah or getting sick)* **the apparent state opposes it** *(there is no proof to support that the meaning of Haal was implied thus its literal meaning will be taken)*. **If the contrary to the apparent meaning is supported** *(that he meant it to be conditional)* **by his intention then it will be established** *(that it is conditional and the Talaaq will apply only when that condition is fulfilled between him and ALLAAH. However we will still rule that the Talaaq was issued immediately as our ruling is based on apparent conditions which support Talaaq being issued immediately)***.**

An example when 'و' cannot denote Haal

وَلَوْ قَالَ خُذْ هٰذِهِ الْاَلْفَ مُضَارَبَةً وَ اعْمَلْ بِهَا فِي الْبَزِّ لاَ يَتَقَيَّدُ الْعَمَلُ فِى الْبَزِّ وَ يَكُوْنُ الْمُضَارَبَةُ عَامَّةً لِاَنَّ الْعَمَلَ فِى الْبَزِّ لاَ يَصْلُحُ حَالاً لِاَخْذِ الْاَلْفِ مُضَارَبَةً فَلاَ يَتَقَيَّدُ صَدْرُ الْكَلاَمِ بِهِ

If a person tells another, "Take this thousand for Madharabah[1] <u>and</u> use it for trade it textiles *(fabric, cloth)***" then the act of Madharabah will not be restricted to trade in textiles** *(in other words the letter '***و***' will not denote Haal and trade in textiles will not be a condition for taking of the*

[1] Madharabah is where one person provides the capital for trade; the other provides the labour and the profits shared between them.

thousand) **but Madharabah will be general** *(one may use the money to trade in anything)***. The reason for this** *(why Mudharabah will not be restricted to trade in textiles only)* **is that trade in textiles cannot be the Haal for taking this thousand for Mudharabah** *(as they are in two different time periods; he cannot take the money and be trading in textiles at the same time but will first take the money and then later trade in textiles causing them to trade in two different periods, whereas the Haal and Dhul-Haal need to be in the same time period)***, thus it will not be restricted by the subsequent sentence** *(of "use it for trade it textiles")***.**

Ruling derived from the above

وَ عَلٰى هٰذَا قَالَ اَبُوْ حَنِيْفَةَ رحمه الله تعالٰى اِذَا قَالَتْ لِزَوْجِهَا طَلِّقْنِىْ وَلَكَ اَلْفٌ فَطَلَّقَهَا لاَ يَجِبُ لَهُ عَلَيْهَا شَيْئٌ لِاَنَّ قَوْلَهَا وَلَكَ اَلْفٌ لاَ يُفِيْدُ حَالَ وُجُوْبِ الْاَلْفِ عَلَيْهَا وَ قَوْلُهَا طَلِّقْنِىْ مُفِيْدٌ بِنَفْسِهِ فَلاَ يُتْرَكُ الْعَمَلُ بِهِ بِدُوْنِ الدَّلِيْلِ بِخِلاَفِ قَوْلِهِ اِحْمَلْ هٰذا الْمَتَاعَ وَلَكَ دِرْهَمٌ لِاَنَّ دَلاَلَةَ الْاِجَارَةِ يَمْنَعُ الْعَمَلَ بِحَقِيْقَةِ اللَّفْظِ

Based upon this *(that the letter 'و' will not denote Haal if the statement does not have the ability to be so)* **Imaam Abu Hanifahع says, "If a woman tells her husband, "Divorce me <u>and</u> you have a thousand" after which he divorces her, then** *(the Talaaq will apply but)* **nothing will be Waajib upon her** *(she will not owe him a thousand)* **because her statement, "You have a thousand" does not have the ability to be Haal** *(or a condition)* **for making a thousand Waajib upon her** *(since it is merely additional information and actual Talaaq has no recompense, thus there is no proof that it is a condition*

for Talaaq) **and her request, "Divorce me" is sufficient in itself** *(for requesting Talaaq and is not dependent on any further clause)***, thus we will not abandon practicing on it** *(her request, "Divorce me")* **without proof** *(we will not take the meaning of Haal if there is no proof that it is implied)* **as opposed to someone saying, "Lift these goods <u>and</u> you have a dirham"** *(where the '**و**' will denote Haal)* **because proof of Ijaarah** *(that the person labour is being employed or leased)* **prevents practicing upon the literal meaning** *(there is proof that the meaning of Ijaarah is implied here thus the literal meaning will be abandoned)***.**

The letter 'ف'

فصل

اَلْفَاءُ لِلتَّعْقِيْبِ مَعَ الْوَصْلِ وَلِهٰذَا تُسْتَعْمَلُ فِى الأَجْزِيَةِ لِمَا اَنَّهَا تَتَعَقَّبُ الشَّرْطَ قَالَ اَصْحَابُنَا: اِذَا قَالَ: بِعْتُ مِنْكَ هٰذَا الْعَبْدَ بِأَلْفٍ، فَقَالَ الآخَرُ: فَهُوَ حُرٌّ يَكُوْنُ ذٰلِكَ قُبُوْلاً لِلْبَيْعِ اِقْتِضَاءً وَيَثْبُتُ الْعِتْقُ مِنْهُ عَقِيْبَ الْبَيْعِ بِخِلاَفِ مَالَوْ قَالَ: وَهُوَ حُرٌّ أَوَهُوَ حُرٌّ فَاِنَّهُ يَكُوْنُ رَدًّا لِلْبَيْعِ

The letter 'ف' denotes subsequence with conjunction *(will denote the subsequent action occurred after the statement made prior to it)***, which is why it is used in the Jazaa** *(consequence of a condition, the letter '**ف**' will denote that the sentence subsequent to it is a consequence of the condition prior to it)* **because it** *(Jazaa)* **is subsequent to a Sharth** *(condition)***. Our scholars** *(of the Hanafi Madhab)* **say if a person says to another, "I am selling this slave to you in lieu of a thousand" and the other** *(the buyer)* **replies, "<u>Then</u> he is free"; this will be acceptance of the sale through Iqtidha'un Nas** *(setting the slave free would require him to own the slave first thus his statement would necessitate that he accepts and sets the slave free)* **and freedom** *(for the slave)* **will be established after the transaction as opposed to if he**

says "<u>And</u> he is free" *(with the letter 'و')* **or "He is free"** *(without any prefix before it)* **as this will be refusal of the sale** *(as the statement "and he is free" as well as "he is free" would be additional information pointing out the slave to be free because of which the sale is invalid and not like in the letter 'ف' which indicates that the subsequent action occurred after the statement made prior to it)***.**

<u>Example Two</u>

وَ اِذَا قَالَ لِلْخَيَّاطِ: اُنْظُرْ اِلٰى هٰذَا الثَّوْبِ أيَكْفِيْنِىْ قَمِيْصًا؟ فَنَظَرَ فَقَالَ: نَعَمْ! فَقَالَ صَاحِبُ الثَّوْبِ: فَاقْطَعْهُ فَقَطَعَهُ فَاِذَا هُوَ لاَ يَكْفِيْهِ كَانَ الْخَيَّاطُ ضَامِنًا لِاَنَّهُ اِنَّمَا اَمَرَهُ بِالْقَطْعِ عَقِيْبَ الْكِفَايَةِ بِخِلَافِ مَا لَوْ قَالَ: اِقْطَعْهُ فَقَطَعَهُ فَاِنَّهُ لَا يَكُوْنُ الْخَيَّاطُ ضَامِنًا

If a person says to a tailor, "Look at this cloth, will it be sufficient for *(to sow)* **a shirt" and the tailor replies that it is** *(sufficient)***, on which he instructs the tailor, "<u>Then</u> cut it". The tailor then cuts it but it is insufficient** *(to sow a shirt)***, the tailor will be responsible for it because he ordered the tailor to cut it subsequent to the tailor informing him it is sufficient** *(thus his instruction, "Then cut it" means "cut it if it is sufficient")***. This ruling is opposed to when he says "Cut it" or "And cut it" after which it is cut because the tailor will not be responsible** *(as in this case his instruction to cut will not be subsequent and attached to the tailor informing him it is sufficient)***.**

<u>Example Three</u>

وَلَوْ قَالَ: بِعْتُ مِنْكَ هٰذَا الثَّوْبَ بِعَشَرَةٍ فَاقْطَعْهُ فَقَطَعَهُ وَلَمْ يَقُلْ شَيْئًا كَانَ الْبَيْعُ تَامًّا

If a person says to another, "I am selling this cloth to you in lieu of ten *(dirhams)*, **then cut it** *(if you accept the sale)* **and he** *(the buyer)* **cuts it, without saying anything** *(without verbally consenting)* **then the sale is complete.**

Example Four

وَلَوْ قَالَ: اِنْ دَخَلْتِ هٰذِهِ الدَّارَ فَهٰذِهِ الدَّارَ فَاَنْتِ طَالِقٌ فَالشَّرْطُ دُخُوْلُ الثَّانِيَةِ عَقِيْبَ دُخُوْلِ الأوْلٰى مُتَّصِلاً بِهِ حَتّٰى لَوْ دَخَلَتِ الثَّانِيَةَ أوْلاً أوْ اٰخِرًا لٰـكِنَّهُ بَعْدَ مُدَّةٍ لاَ يَقَعُ الطَّلاَقُ

If a person says *(to his wife)*, **"If you enter this house <u>then</u> this house, you are divorced" the condition** *(for Talaaq to apply)* **is to enter the second house immediately after entering the first house such that if a person entered the second house first and then the first house, or entered the first house but then entered the second house after a lengthy period, the Talaaq will not apply.**

'ف' sometimes describes the Illat

وَقَدْ يَكُوْنُ الْفَاءُ لِبَيَانِ الْعِلَّةِ مِثَالُه: اِذَا قَالَ لِعَبْدِهِ: اَدِّ اِلَيَّ اَلْفًا فَأنْتَ حُرٌّكَانَ الْعَبْدُ حُرًّا فِى الْحَالِ، وَاِنْ لَّمْ يُؤَدِّ شَيْئًا وَلَوْ قَالَ لِلْحَرْبِيِّ: اِنْزِلْ فَأنْتَ اٰمِنٌ كَانَ اٰمِنًا، وَاِنْ لَمْ يَنْزِلْ

Sometimes the 'ف' describes the Illat *(it will be used to denote a property or characteristic found in that person or item)*. **An example of this** *(how 'ف' describes the Illat)* **is if a person tells his slave, "Pay me one thousand <u>because</u> you are free"** *(in this case)* **the slave will be set free immediately and will not have to pay** *(his master)* **anything.** *(Another example)***If a person tells an enemy combatant, "Come**

down <u>because</u> you have sanctuary", he will be given sanctuary immediately even if he does not come down.

'ف' is sometimes attached to the ruling of the Illat

وَفِىْ الْجَامِعِ مَا اِذَا قَالَ: اَمْرُ اِمْرَأتِىْ بِيَدِكَ فَطَلِّقْهَا فَطَلَّقَهَا فِى الْمَجْلِسِ طُلِّقَتْ تَطْلِيْقَةً بَائِنَةً وَلاَ يَكُوْنُ الثَّانِىْ تَوْكِيْلاً بِطَلاَقٍ غَيْرِالأوَّلِ فَصَارَ كَأنَّه قَالَ: طَلِّقْهَا بِسَبَبِ اَنَّ اَمْرَهَا بِيَدِكَ وَلَوْ قَالَ طَلِّقْهَا فَجَعَلْتُ اَمْرَهَا بِيَدِكَ وَطَلَّقَهَا فِى الْمَجْلِسِ طُلِّقَتْ تَطْلِيْقَةً رَجْعِيَّةً

In 'Jaamie Kabeer' it is mentioned that if a person says to another, "My wife's affairs are in your hands <u>so</u> give her Talaaq *(on my behalf)*" **and he then divorces her in the same sitting, then one Talaaq Baa'inah** *(irrevocable Talaaq)* **will apply** *(as the statement "My wife's affairs are in your hands" is ambiguous because of which Talaaq Baa'inah would apply)* **and the second sentence** *(the instruction "So divorce her")* **will not be permission to issue another Talaaq besides the first. It is as if he said** *(the meaning of his two statements will be)* **"Divorce her because her affairs are in your hands". If he were to have said, "Divorce her <u>then</u> I will hand her affairs over to you" after which he divorced her in the same sitting then a Talaaq Raj'ie** *(revocable Talaaq)* **will apply** *(as the statement "Divorced her" is clear and unambiguous because of which Talaaq Raj'ie would apply)*.

وَلَوْ قَالَ طَلِّقْهَا وَجَعَلْتُ اَمْرَهَا بِيَدِكَ فَطَلَّقَهَا فِى الْمَجْلِسِ طُلِّقَتْ تَطْلِيْقَتَيْنِ وَكَذٰلِكَ لَوْ قَالَ طَلِّقْهَا وَاَبِنْهَا أوْ اَبِنْهَا وَطَلِّقْهَا فَطَلَّقَهَا فِى الْمَجْلِسِ وَقَعَتْ تَطْلِيْقَتَانِ

If he were to have said, "Divorce her and I hand her affairs over to you" after which he divorced her in the same sitting, then two Talaaq Baa'inah will apply *(as the letter 'و' was used here which indicates that he authorised him to give*

two separate Talaaq). **Similarly if he said, "Divorced her and separate her** *(from me)***", or** *(he says)* **"Separate her** *(from me)* **and divorce her", after which he divorces her in the same sitting, two Talaaq Baa'inah will apply.**

Rulings derived from the above

وَعَلٰى هٰذَا قَالَ اَصْحَابُنَا اِذَا اُعْتِقَتِ الأَمَةُ الْمَنْكُوْحَةُ ثَبَتَ لَهَا الْخِيَارُ سَوَآءٌ كَانَ زَوْجُهَا عَبْدًا أَوْ حُرًّا لانَّ قَوْلَه عَلَيْهِ السَّلامُ لِبَرِيْرَة حِيْنَ اُعْتِقَتْ مَلَكْتِ بُضْعَكِ فَاخْتَارِىْ اَثْبَتَ الْخِيَارَ لَهَا بِسَبَبِ مِلْكِهَا بُضْعَهَا بِالْعِتْقِ وَهٰذَا الْمَعْنٰى لاَيَتَفَاوَتُ بَيْنَ كَوْنِ الزَّوْجِ عَبْدًا أَوْ حُرًّا

Based upon this *(that the letter '**ف**' is sometimes attached to the ruling of the Illat)* **our scholars** *(of the Hanafi Madhab)* **that if a married female slave is set free then she will have Khiyaar** *(the right to withdraw from the marriage)* **whether her husband is a slave or free because the Hadeeth of Rasulullaah to Hadhrat Bareerah when she was set free, "You have become master of yourself so decide for yourself** *(you have the right to withdraw so decide whether you wish to remain in his wedlock or not)***", establishes Khiyaar for her because of her becoming her own master by being set free, which is attained whether her husband is a slave or free.**

Rulings derived from the above

وَيَتَفَرَّعُ مِنْهُ مَسْأَلَةُ اِعْتِبَارِ الطَّلاَقِ بِالنِّسَآءِفَاِنَّ بُضْعَ الأمَةِ الْمَنْكُوْحَةِ مِلْكُ الزَّوْجِ وَلَمْ يَزَلْ عَنْ مِلْكِهِ بِعِتْقِهَا فَدَعَتِ الضَّرُوْرَةُ اِلَى الْقَوْلِ بِازْدِيَادِ الْمِلْكِ بِعِتْقِهَا حَتّٰى يَثْبُتَ لَهُ الْمِلْكُ فِى الزِّيَادَةِ وَيَكُوْنُ ذٰلِكَ سَبَبًا لِثُبُوْتِ

الْخِيَارِ لَهَا وَازْدِيَادُ مِلْكِ الْبُضْعِ بِعِتْقِهَا مَعْنَى مَسْأَلَةِ اِعْتِبَارِ الطَّلَاقِ بِالنِّسَآءِ فَيُدَارُ حُكْمُ مَالِكِيَّةِ الثَّلَاثِ عَلٰى عِتْقِ الزَّوْجَةِ دُوْنَ عِتْقِ الزَّوْجِ كَمَا هُوَ مَذْهَبُ الشَّافِعِيِّ

Derived from the Hadeeth mentioned above *("You have become master of yourself* <u>*so*</u> *decide for yourself")* **is the law of considering** *(the number of)* **Talaaq on** *(the condition of)* **women***(whether the husband has the right to issue three Talaaq or two Talaaq will be based on the state of the woman, such that if she is a slave the husband will the right to issue only two Talaaq regardless of whether he is a slave or not and if she is free then he will have the right to issue three Talaaq regardless of whether he is a slave or not)***, the reason for this is that the right** *(to sexual relations)* **over the wife belongs to the husband and this was not taken away from him by her being set free** *(as he still has the same right)***, thus necessity dictates that by her being set free his right** *(over her)* **also increased, which is the reason for giving her Khiyaar** *(in other words the reason for giving her Khiyaar is that the right of the husband over the wife increased, which is only possible by the husband gaining the right to three Talaaqs and in the Hadeeth it was the wife who was set free, making the condition of the woman the reason for considering the number of Talaaq)***. The increase of the right of the husband by her being set free is the Illat** *(principle cause)* **for considering** *(the number of)* **Talaaq on** *(the condition of)* **women, thus the ruling of gaining right to three Talaaq will be based upon the condition of the wife and not the husband as is the opinion of Imaam Shaafie .**

'ثُمَّ' is for suspension

فصل

ثُمَّ لِلتَّرَاخِيْ لٰكِنَّه عِنْدَ اَبِىْ حَنِيْفَةَ يُفِيْدُ التَّرَاخِىَ فِى اللَّفْظِ وَالْحُكْمِ وَعِنْدَهُمَا يُفِيْدُ التَّرَاخِىَ فِى الْحُكْمِ وَبَيَانُه فِيْمَا اِذَا قَالَ لِغَيْرِ الْمَدْخُوْلِ بِهَا اِنْ دَخَلْتِ الدَّارَ فَاَنْتِ طَالِقٌ ثُمَّ طَالِقٌ ثُمَّ طَالِقٌ فَعِنْدَه يَتَعَلَّقُ الأوْلٰى بِالدُّخُوْلِ وَتَقَعُ الثَّانِيَةُ فِى الْحَالِ وَلَغَتِ الثَّالِثَةُ وَعِنْدَهُمَا يَتَعَلَّقُ الْكُلُّ بِالدُّخُوْلِ ثُمَّ عِنْدَ الدُّخُوْلِ يَظْهَرُ التَّرْتِيْبُ فَلاَ يَقَعُ اِلاَّ وَاحِدَةٌ وَلَوْ قَالَ اَنْتِ طَالِقٌ ثُمَّ طَالِقٌ ثُمَّ طَالِقٌ اِنْ دَخَلْتِ الدَّارَ فَعِنْدَ اَبِىْ حَنِيْفَةَ وَقَعَتِ الأوْلٰى فِى الْحَالِ وَلَغَتِ الثَّانِيَةُ وَالثَّالِثَةُ وَعِنْدَهُمَايَقَعُ الْوَاحِدَةُ عِنْدَ الدُّخُوْلِ لِمَا ذَكَرْنَا

'ثُمَّ' is for suspension *(it indicates a delay between the sentence before and after it)* **however** *(there is a difference of opinion whether it indicates a delay in speech and ruling or only in the ruling and)* **according to Imaam Abu Hanifah □ it indicates a delay in speech and ruling** *(a delay in speech means that 'ثم' indicates that the speaker literally paused before making the next statement and a delay in ruling means that 'ثم' indicates that the statement after it applies after the first statement)* **and according to Imaam Abu Yusuf □ and Imaam Muhammed □ it indicates a delay in ruling only. The result of this** *(difference of opinion)* **becomes apparent in the example, if a person tells his wife, with whom he has not consummated the marriage, "If you enter the house, you are divorced <u>then</u> divorced <u>then</u> divorced". According to Imaam Abu Hanifah □** *(it indicates a delay in speech and ruling and his statement would be the same as saying "If you enter the house, you are divorced<u>...</u>then divorced<u>...</u> then divorced", thus)* **the first** *(Talaaq)* **will apply on entry** *(will only apply when she enters the house)***, the second will apply immediately** *(as it will not be attached to the condition of entry since it was said later)* **and the third will be void** *(because an unconsummated marriage terminates with one Talaaq and will be inapplicable)***.**

Whereas according to Imaam Abu Yusuf □ and Imaam Muhammed □ *(it indicates a delay in ruling only and)* **all**

three Talaaq will only apply when she enters the house and when she enters the house they will apply in sequence such that only one will apply *(as the marriage will terminate with it and the other two will be inapplicable)***.**

If he said *(to his wife)***, "You are divorced then divorced then divorced, if you enter this house" then according to Imaam Abu Hanifah** *(it indicates a delay in speech and ruling and his statement would be the same as saying "You are divorced__...__then divorced__...__ then divorced, if you enter this house", thus)* **the first will apply immediately and the second and third will be void** *(as the marriage will terminate with it and the other two will be inapplicable)* **whereas according to Imaam Abu Yusuf and Imaam Muhammed only one apply when she enters as we have mentioned** *(that all three will be dependent on entry and will apply in sequence when she enters the house and since the marriage will terminate with the first the other two will be inapplicable)***.**

وَاِنْ كَانَتِ الْمَرْاَةُ مَدْخُوْلاً بِهَا فَاِنْ قَدَّمَ الشَّرْطَ تَعَلَّقَتِ الأوْلٰى بِالدُّخُوْلِ وَيَقَعُ ثِنْتَانِ فِى الْحَالِ عِنْدَ اَبِىْ حَنِيْفَةَ رَحِمَهُ اللهُ تَعَالٰى وَاِنْ اَخَّرَ الشَّرْطَ وَقَعَ ثِنْتَانِ فِى الْحَالِ وَتَعَلَّقَتِ الثَّالِثَةُ بِالدُّخُوْلِ وَعِنْدَهُمَا يَتَعَلَّقُ الْكُلَّ بِالدُّخُوْلِ فِى الْفَصْلَيْنِ

If the marriage was consummated and the condition mentioned first *(that is he said, "If you enter the house, you are divorced <u>then</u> divorced <u>then</u> divorced")* **then the first will be dependent on entry and the last two will apply immediately according to Imaam Abu Hanifah** *(as according to him it is as if he said, "If you enter the house, you are divorced__...__then divorced__...__ then divorced")* **and if the condition was mentioned last** *(that is he said, "You are*

divorced then divorced then divorced, if you enter this house", according to Imaam Abu Hanifah) **the first two will apply immediately and** *(only)* **the last will be dependent on entry** *(as according to him it is as if he said, "You are divorced… then divorced… then divorced, if you enter this house")***.**

(However) **According to Imaam Abu Yusuf and Imaam Abu Muhammed in both instances the all three Talaaq will depend on entry."**

'بَلْ' for correction

فصل

بَلْ لِتَدَارُكِ الْغَلَطِ بِاِقَامَةِ الثَّانِىْ مَقَامَ الأوَّلِ فَاِذَا قَالَ لِغَيْرِ الْمَدْخُوْلِ بِهَا اَنْتِ طَالِقٌ وَاحِدَةً لاَ بَلْ ثِنْتَيْنِ وَقَعَتْ وَاحِدَةً لانَّ قَوْلَه لاَ بَلْ ثِنْتَيْنِ رُجُوْعٌ عَنِ الأوَّلِ بِاِقَامَةِ الثَّانِىْ مَقَامَ الأوَّلِ وَلَمْ يَصِحَّ رُجُوْعُه فَيَقَعُ الأوْلٰى فَلاَ يَبْقَى الْمَحَلُّ عِنْدَ قَوْلِهِ ثِنْتَيْنِ وَلَوْكَانَتْ مَدْخُوْلاً بِهَا يَقَعُ الثَّلاَثُ

'بَلْ' is to correct an error by replacing the first *(sentence before 'بَلْ')* **with the second** *(after 'بَلْ')*. *(For example)* **If a person says to his wife, with whom he has not yet consummated the marriage, "You are divorced once, no <u>but rather</u> twice" then only one Talaaq will apply because his statement "No <u>but rather</u> twice" is correction of the first statement by replacing it with the second but**

retraction of the first statement is incorrect[1]*(because it is Jumla Insha'iyah)* **so the first Talaaq will apply and the two will be inapplicable** *(because a wife with whom the marriage has not been consummated comes out of his Nikaah with one Talaaq)***. If the marriage was consummated then three Talaaq would apply** *(since the first cannot be retracted the second statement will be a further two Talaaq)***.**

وَهٰذَا بِخِلاَفِ مَا لَوْ قَالَ لِفُلاَنٍ عَلَيَّ اَلْفٌ لاَ بَلْ اَلْفَانِ حَيْثُ لاَ يَجِبُ ثَلٰثَةُ اٰلاَفٍ عِنْدَنَا وَقَالَ زُفَرُ رَحِمَهُ اللهُ تَعَالٰى: يَجِبُ ثَلٰثَةُ اٰلاَفٍ لاَنَّ حَقِيْقَةَ اللَّفْظِ لِتَدَارُكِ الْغَلَطِ بِاِثْبَاتِ الثَّانِىْ مَقَامَ الأَوَّلِ وَلَمْ يَصِحَّ عِنْدَ اِبْطَالِ الأَوَّلِ فَيَجِبُ تَصحِيْحُ الثَّانِىْ مَعَ بَقَاءِ الأَوَّلِ وَذٰلِكَ بِطَرِيْقِ زِيَادَةِ الأَلْفِ عَلَى الأَلْفِ الأَوَّلِ بِخِلاَفِ قَوْلِهِ: اَنْتِ طَالِقٌ وَاحِدَةً بَلْ ثِنْتَيْنِ لاَنَّ هٰذَا اِنْشَاءٌ وَذٰلِكَ اِخْبَارٌ وَالْغَلَطُ اِنَّمَا يَكُوْنُ فِى الاِخْبَارِ دُوْنَ الانْشَاءِ فَأَمْكَنَ تَصْحِيْحُ اللَّفْظِ بِتَدَارُكِ الْغَلَطِ فِى الاقْرَارِ دُوْنَ الطَّلاَقِ حَتّٰى لَوْكَانَ الطَّلاَقُ بِطَرِيْقِ الاخْبَارِ بِاَنْ قَالَ كُنْتُ طَلَّقْتُكِ أَمْسِ وَاحِدَةً لاَ بَلْ ثِنْتَيْنِ يَقَعُ ثِنْتَانِ لِمَا ذَكَرْنَا

This ruling *(that three Talaaq will apply as mentioned above)* **is different from him saying, "I owe a certain person one thousand no <u>but rather</u> two thousand"** *(as this is Jumla Khabariya, wherein retraction of the first statement and correcting it with 'بَلْ'is permissible)* **such that according to us** *(Hanafi scholars)* **three thousand will not we Waajib on him. Imaam Zufar is of the opinion that three thousand will be Waajib. The reason for this** *(our proof)* **is that the actual purpose of 'بَلْ' is correction of the error** *(the statement prior to it)* **by replacing it with the second** *(statement after 'بَلْ')* **and** *(complete)* **retraction of the first is not possible** *(as he cannot retract his admission of debt)* **so the second will be put into effect while keeping the first** *(admission of debt)* **intact, and this is possible by making**

[1]Correcting the previous statement using 'بَلْ' is only possible when the sentence is Jumla Khabariya (a sentence which has the possibility of being false) and not in Jumla Insha'iyah (a sentence which cannot be false).

another thousand Waajib upon the first thousand. This ruling is opposed to his saying, "You are divorced once, no, <u>but rather</u> twice" because that is Insha'iyah and the example above is Khabariya and an error can be corrected in Khabariya and not Insha'iyah, so correcting the word by retracting the error is possible in Iqraar *(admission)* **and not in Talaaq** *(as it is Insha'iyah)* **such that if the Talaaq was issued in a manner of Ikhbaar** *(informing)* **by saying, "I gave you one Talaaq yesterday, no <u>but rather</u> two", then two will apply in the manner mentioned above** *(that* '**بَلْ**'*will correct the previous statement of one Talaaq being issued and replace it with the second that two was issued, as it is Jumla Khabariya).*

'لكن' is for clarification

فصل

لٰـكِنْ لِلاِسْتِدْرَاكِ بَعْدَ النَّفْيِ فَيَكُوْنَ مَوْجَبُه اثْبَاتُ مَا بَعْدَه ۚ فَأَمَّا نَفْىُ مَا قَبْلَه فَثَابِتٌ بِدَلِيْلِهِ

'لكن' is for clarification after negation *(when something is negated then a doubt might arise as to whether certain aspects have been negated as well thus* **'لكن'** *will establish that it has not been negated)***. Thus it will affirm what comes after it** *(that it is has not been negated)***. As far as the negation before it** *(before* **'لكن'***)* **is concerned, it will still apply by it** *(whatever has been negated before the* **'لكن'** *will still be negated)***.**

Preconditions for it to serve the purpose of clarification

وَالْعَطْفُ بِهٰذِهِ الْكَلِمَةِ اِنَّمَا يَتَحَقَّقُ عِنْدَ اِتِّسَاقِ الْكَلاَمِ فَاِنْ كَانَ الْكَلاَمُ مُتَّسِقًا يَتَعَلَّقُ النَّفْىُ بِاِثْبَاتِ الَّذِىْ بَعْدَه وَاِلاَّ فَهُوَ مُسْتَأْنِفٌ

Conjunction with 'لكن' *(such that it clarifies the level of negation by excluding what comes after it from being negated)*

only applies when the speech is concurrence [1]*(there is no pause between the first and second statement)*. **If the speech is in concurrence then the negation will be attached to the affirmation that comes after it** *(whereby whatever comes after* **'لكن'** *will not be negated)* **and if not** *(if the speech is not in concurrence)* **then it will be a new sentence** *(and will have no relation to the negation before it)***.**

Example One

مِثَالُه مَا ذَكَرَه مُحَمَّدٌ رَحِمَهُ اللهُ تَعَالٰى فِى الْجَامِعِ: اِذَا قَالَ لِفُلاَنٍ عَلَـيَّ اَلْفٌ قَرْضٌ فَقَالَ فُلاَنٌ: لاَ وَلٰكِنَّه غَصْبٌ لَزِمَهُ الْمَالُ لانَّ الْكَلاَمَ مُتَّسِقٌ فَظَهَرَ أَنَّ النَّفْىَ كَانَ فِى السَّبَبِ دُوْنَ نَفْسِ الْمَالِ

An example of this*(where '**لكن**' is said in concurrence)* **is what was mentioned by Imaam Muhammed in 'Al-Jaamiul Kabeer', when a person says to another, "I owe a thousand as debt" and the other person says "No** *(you do not owe the money as debt)***<u>however</u>***(you owe the money)* **because of illegal seizure** *("you illegally seized it from me)"* **the amount** *(thousand)* **will we incumbent upon him to pay because the speech** *(the statement, "however because of illegal seizure")* **was said in concurrence after negation clarifying that the negation was of the manner in which it is owed and not** *(negation)* **of owing the money itself.**

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[1]In order for '**لكن**' to act as a conjunction, whereby it clarifies the level of negation by excluding whatever comes after it from being negated, the speech needs to be in concurrence , and in order for speech to be in concurrence two conditions need to be met . These two conditions are;

1) The speech must be uninterrupted such that there is no pause or break in the speech but rather the statement after '**لكن**' is said consecutively and immediately after the first.

2) What is being excluded from negation after '**لكن**' must not be the very same aspect which is being negated before it. The same thing which is being negated first cannot be affirmed thereafter using '**لكن**', in this case '**لكن**' will not act as a conjunction but will denote a new sentence having no relation to the negation before it.

وَكَذٰلِكَ لَوْ قَالَ لِفُلاَنٍ: عَلَيَّ اَلْفٌ مِنْ ثَمَنِ هٰذِهِ الْجَارِيَةِ فَقَالَ فُلاَنٌ: لاَ الْجَارِيَةُ جَارِيَتُكَ وَلَكِنْ لِيْ عَلَيْكَ اَلْفٌ يَلْزَمُهُ الْمَالُ فَظَهَرَ اَنَّ النَّفْىَ كَانَ فِى السَّبَبِ لاَ فِىْ اَصْلِ الْمَالِ

Similarly *(another example of '**لكن**')* **is if a person says to another, "I owe you a thousand in lieu of this slave" and the other person replies, "No, the slave is yours however you owe me one thousand** *(as a debt)*".**The amount** *(thousand)* **will we incumbent upon him to pay as it is clear that the negation was of the manner in which it is owed and not** *(negation)* **of owing the money itself.**

وَلَوْكَانَ فِىْ يَدِهِ عَبْدٌ فَقَالَ: هٰذَا لِفُلاَنٍ فَقَالَ فُلاَنٌ: مَا كَانَ لِىْ قَطُّ وَلٰكِنَّه لِفُلاَنٍ آخَرَ فَاِنْ وَصَلَ الْكَلاَمَ كَانَ الْعَبْدُ لِلْمُقَرِّ لَهُ الثَّانِىْ لانَّ النَّفْىَ يَتَعَلَّقُ بِالاثْبَاتِ وَاِنْ فَصَلَ كَانَ الْعَبْدُ لِلْمُقَرِّ لَهُ الأَوَّلِ فَيَكُوْنُ قَوْلُ الْمُقَرِّ لَهُ رَدًّا لِلاِقْرَارِ

If a person*(e.g. Ali)* **has a slave in his possession and says, "This slave belongs to a certain person** *(e.g. Zaid)*" **on which the other person** *(Zaid)* **says, "This slave never belonged to me <u>however</u> it belongs to so and so** *(e.g. Amr)*"; **if his statement**, *("This slave never belonged to me but it belongs to so and so")***is said in concurrence then the slave will belong to the other** *(Amr)* **because his negation***(of the slave being his)* **will be attached to the affirmation** *(of the slave belonging to Amr)*. *(However)* **If he delays or pauses** *(before saying, "But it belongs to Amr")* **then the slave will belong to the one who admitted it belonged to another** *(i.e. Ali)* **and the statement of the person who it was claimed to be** *(Zaid)* **will be denial of the omission** *(when he paused before saying, "but it is Amr's" this will be a new sentence, separating it from his previous statement of denial, and will be testimony that it is Amr's and since testimony of one person is not valid, the slave will still belong to Ali)*.

وَلَوْ أنَّ اَمَةً تَزَّوَجَتْ نَفْسَهَا بِغَيْرِ اِذْنِ مَوْلاَهَا بِمِائَةِ دِرْهَمٍ فَقَالَ الْمَوْلٰى لاَ اُجِيْزُ الْعَقْدَ بِمِائَةِ دِرْهَمٍ وَلَكِنْ اُجُيْزُه بِمِائَةٍ وَخَمْسِيْنَ بَطَلَ الْعَقْدُ لانَّ الْكَلاَمَ غَيْرُ مُتَّسِقٍ فَاِنَّ نَفْىَ الاجَازَةِ وَاِثْبَاتَهَا بِعَيْنِهَا لاَ يَتَحَقَّقُ فَكَانَ قَوْلُه لٰـكِنْ اُجِيْزُهُ اِثْبَاتُه بَعْدَ رَدِّ الْعَقْدِ وَكَذٰلِكَ لاَ أجِيْزُهُ وَلٰـكِنْ اُجِيْزُهُ اِنْ زِدْتَنِىْ خَمْسِيْنَ عَلَى الْمِائَةِ يَكُوْنُ فَسْخًا لِلنِّكَاحِ لِعَدَمِ اِحْتِمَالِ الْبَيَانِ لانَّ مِنْ شَرْطِهِ اَلاِتِّسَاقُ وَلاَ اِتِّسَاقَ

If a female slave marries without the permission of her master *(making the validity of her marriage dependent on his permission)* **for Mehr of one hundred Dirhams** *(which would belong to the master)* **and the master says, "I do not permit the contract** *(of Nikaah)* **for one hundred Dirhams <u>however</u> I permit it for one hundred and fifty Dirhams", the contract** *(of Nikaah)* **will be invalidated because the speech is not in concurrence** *(which is a condition for'**لكن** to act as a conjunction)* **since negation of permission and then affirmation thereafter cannot be concurred** *(coincide)*. **Thus his statement "However I permit it" was said after he** *(just)* **negated the contract. Similarly if he says, "I do not permit it <u>however</u> I permit it if you give me fifty more Dirhams including the hundred" the contract of Nikaah will be invalidated as it cannot be regarded as clarification** *(of doubt after negation)* **as its precondition** *(to act as a conjunction clarifying the doubt caused by the negation prior to it)* **is that it must be in concurrence and it is not in concurrence here** *(as the second condition of concurrence has not been met, namely what is affirmed after '**لكن** must not be what has been negated before it.)*

'اَوْ' is to grant choice

فصل

أوْ لِتَنَاوُلِ اَحَدِ الْمَذْكُوْرَيْنِ

'اَوْ' is to include either one of the two mentioned *(choices in the ruling)***.**

Example One

وَلِهٰذَا لَوْ قَالَ هٰذَا حُرٌّ وَهٰذَا كَانَ بِمَنْزِلَةِ قَوْلِهِ اَحَدُهُمَا حُرٌّ حَتّٰى كَانَ لَه وِلاَيَةُ الْبَيَانِ

Therefore *(since* '**اَوْ**' *will include either one of the two mentioned choices in the ruling)* **if a person says** *(regarding his slaves)***, "This one is free <u>or</u> this one", then this will be the same as him saying, "One of them is free" such that he will have the right to clarify which one of them is free.**

Example Two

وَلَوْ قَالَ وَكَّلْتُ بِبَيْعِ هٰذَا الْعَبْدِ هٰذَا أَوْ هٰذَا كَانَ الْوَكِيْلُ اَحَدَهُمَا وَيُبَاحُ الْبَيْعُ لِكُلِّ وَاحِدٍ مِنْهُمَا وَلَوْ بَاعَ اَحَدُهُمَا ثُمَّ عَادَ الْعَبْدُ اِلَى مِلْكِ الْمُوَكِّلِ لاَ يَكُوْنُ لِلاٰخَرِ اَنْ يَّبِيْعَه

If a person says *regarding his slave)***, "I have appointed this person <u>or</u> this person to sell this slave", then either of them will be his representative** *(in this sale)* **and it will be permissible for either one of them to sell the slave.** *(However)* **If one of them sells the slave and the slave** *(eventually)* **comes back into the ownership of the Muwakkil** *(the one who appointed the others as his representatives)* **then the other** *(representative)* **will not have the right to sell the slave again** *(as the Muwakkil granted one of them the right to sell the slave and when one of them does so, the other will no longer have the right to sell the slave)***.**

Example Three

وَلَوْ قَالَ: لِثَلٰثِ نِسْوَةٍ لَه هٰذِهِ طَالِقٌ أَوْ هٰذِهِ وَهٰذِهِ طُلِّقَتْ اِحْدَى الأَوْلَيَيْنِ وَطُلِّقَتِ الثَّالِثَةُ فِى الْحَالِ لانْعِطَافِهَا عَلَى الْمُطَلَّقَةِ مِنْهُمَا وَيَكُوْنُ الْخِيَارُ لِلزَّوْجِ فِىْ بَيَانِ الْمُطَلَّقَةِ مِنْهُمَا بِمَنْزِلَةِ مَا لَوْ قَالَ اِحْدٰكُمَا طَالِقٌ وَهٰذ

If a person, who has three wives, says, "This one <u>or</u> this one is divorced and this one", then either one of the first two *(which he specifies)* **will be divorced and the third will be divorced immediately because it is in conjunction with the divorced one of the two. The husband will have the right to clarify which one of them is divorced as in when he says, "One of you two is divorced and this one"** *(whereby he will have to specify which of the first two has been divorced and the third will be divorced instantly)***.**

<u>Example Four</u>

وَعَلٰى هٰذَا قَالَ زُفَرُ رَحِمَهُ اللهُ تَعَالٰى: اِذَا قَالَ لاَ اُكَلِّمُ هٰذَا أَوْ هٰذَا أَوْ هٰذَا كَانَ بِمَنْزِلَةِ قَوْلِهِ لاَ اُكَلِّمُ اَحَدَ هٰذَيْنِ وَهٰذَا فَلاَ يَحْنَثُ مَا لَمْ يُكَلِّمْ أَحَدَ الأَوَّلَيْنِ وَالثَّالِثِ وَعِنْدَنَا لَوْ كَلَّمَ الأَوَّلَ وَحْدَهٗ يَحْنَثُ وَلَوْكَلَّمَ اَحَدَ الاخِرَيْنِ لاَ يَحْنَثُ مَا لَمْ يُكَلِّمْهُمَا

Based upon this *(ruling of Talaaq mentioned above)* **Imaam Zufar says that if a person says, "I will not speak to this person <u>or</u> this person and this person" it will be the same as him saying, "I will not speak to one of these two and this person" such that he will not break his oath until he speaks to one of the first two as well as the third. According to us** *(the majority of scholars of the Hanafi Madhab)* **if he speaks to the first only then his oath will break and if he speaks to the last two then his oath will only break when he speaks to them together** *(as it is the same as him saying "I will not speak to this person or I will not talk to this person and this person")***.**

Example Five

وَلَوْقَالَ بِعْ هٰذَا الْعَبْدَ أَوْ هٰذَا كَانَ لَه أَنْ يَّبِيْعَ اَحَدَهُمَا أَيَّهُمَا شَآءَ

If he says, "Sell this slave <u>or</u> this slave" then the person will have the choice to sell any of the two he wishes.

Example six

وَ لَوْ أَدْخَلَ أَوْ فِى الْمَهْرِبِأَنْ تَزَّوَجَهَا عَلٰى هٰذَا أَوْ عَلٰى هٰذَا يُحَكَّمُ مَهْرُ الْمِثْلِ عِنْدَ أَبِىْ حَنِيْفَةَ رَحِمَهُ اللهُ تَعَالٰى لانَّ اللَّفْظَ يَتَنَاوَلُ اَحَدَهُمَا وَالْمُوْجَبُ الأَصْلِىُّ مَهْرُ الْمِثْلِ فَيَتَرَجَّحُ مَا يُشَابِهُه

If a person adds 'اَوْ' to Mehr by marrying her with this *(Mehr)* **<u>or</u> this** *(Mehr)*, **then according to Imaam Abu Hanifah Mehr Mithal** *(the Mehr commonly given in the area)* **will be used to decide the matter as his statement includes both of the two mentioned and Mehr Mithal is what should be Waajib** *(as when the Mehr is not stipulated or unclear then Mehr Mithal is Waajib)*, **thus that which is closest to it will be specified** *(that amount of the two which is closest to Mehr Mithal will be specified to be the Mehr)*.

Rulings derived from the above

وَعَلٰى هٰذَا قُلْنَا اَلتَّشَهُّدُ لَيْسَ بِرُكْنٍ فِى الصَّلٰوةِ لانَّ قَوْلَه عَلَيْهِ السَّلاَمُ اِذَا قُلْتَ هٰذَا أَوْ فَعَلْتَ هٰذَا فَقَدْ تَمَّتْ صَلٰوتُكَ عَلَّقَ الاتْمَامَ بِأَحَدِهِمَا فَلاَ يَشْتَرِطُ كُلُّ وَاحِدٍ مِنْهُمَا وَقَدْ شُرِطَتِ الْعَقْدَةُ بِالاتِّفَاقِ فَلاَ يُشْتَرَطُ قِرَأَةُ التَّشَهُّدِ

Based upon this *(that 'اَوْ' will include either one of the two mentioned choices in the ruling)* **we say that Tashahud is not Fardh in Salaah because the Hadeeth of Rasulullaah , "If you say this** *(recite Tashahud)***<u>or</u> do this** *(sit in the final*

Qa'adah) **then undoubtedly your Salaah is complete" has made completion of Salaah dependent on either one of them** *(i.e. Salaah will be complete by either the recitation of Tashahud or sitting in the final Qa'adah)* **such that both** *(Tashahud and the final Qa'adah)* **cannot be a requisite** *(Fardh at the same time because 'اَوْ' will include only one of the two in the ruling and not both)* **and the final Qa'adah is already unanimously** *(according to all schools of thought)* **Fardh, thus recitation of Tashahud will not be Fardh** *(as according to this Hadeeth one of the two is a condition for the completion of Salaah and it has already been established that the final Qa'adah is Fardh and a condition for the completion of Salaah, thus the recitation of Tashahud cannot be)***.**

When 'اَوْ' is used in negation

ثُمَّ هٰذِهِ الْكَلِمَةُ فِىْ مَقَامِ النَّفْىِ يُوْجِبُ نَفْىَ كُلِّ وَاحِدٍ مِنَ الْمَذْكُوْرَيْنِ حَتّٰى لَوْ قَالَ لاَ أُكَلِّمُ هٰذَا أَوْ هٰذَا يَحْنَثُ اِذَا كَلَّمَ اَحَدَهُمَا وَفِى الاثْبَاتِ يَتَنَاوَلُ اَحَدَهُمَا مَعَ صِفَةِ التَّخْيِيْرِ كَقَوْلِهِمْ خُذْ هٰذَا أَوْ ذٰلِكَ

Then *(another important rule which one should remember with regards to the usage of 'اَوْ'is)* **if this word** *('اَوْ')* **is used in negation** *(used in a sentence where something is being negated)* **then it necessitates the negation of both objects mentioned such that if a person says, "I will not talk to this person <u>or</u> this person", he will break his oath if he talks to anyone of them** *(and he will not have the choice to specify who he will not talk to)***.** *(However)* **When it is used for affirmation it will apply to both objects with the right to specify** *(he may clarify which of the two he is referring to)* **as**

in when he says, "Take this or that" *(one will have the choice to specify which to take)***.**

The necessity of having choice

وَمِنْ ضَرُوْرَةِ التَّخْيِيْرِ عُمُوْمُ الابَاحَةِ قَالَ اللهُ تَعَالٰى: {فَكَفَّارَتُه اِطْعَامُ عَشَرَةِ مَسَاكِيْنَ مِنْ اَوْسَطِ مَا تُطْعِمُوْنَ أَهْلِيْكُمْ أَوْكِسْوَتُهُمْ أَوْ تَحْرِيْرُ رَقَبَةٍ}

Amongst the necessities of having choice *(the right to choose any of the specified objects)* **is general permissibility** *(to choose any one of them)***.** *(As in)* **The verse,**

"The Kaffaarah for this *(for breaking a deliberate oath)* **is to either feed ten poor persons with food of average quality with which you feed your families, or to clothe them** *(the ten poor persons with clothing that at least covers a major portion of the body)***, or to free a** *(Muslim or non-Muslim)* **slave"** *(in this verse one is permitted to adopt any of the above as the method of paying his Kaffaarah and even all three if he is able and so desires)***.**

'اَوْ' comes with the meaning of "unless"

وَقَدْ يَكُوْنُ أَوْ بِمَعْنٰى حَتّٰى، قَالَ اللهُ تَعَالٰى {لَيْسَ لَكَ مِنَ الأَمْرِ شَئٌ أَوْ يَتُوْبَ عَلَيْهِمْ} قِيْلَ: مَعْنَاهُ حَتّٰى يَتُوْبَ عَلَيْهِمْ قَالَ اَصْحَابُنَا: لَوْ قَالَ لاَ أَدْخُلُ هٰذِهِ الدَّارَ أَوْ أَدْخُلُ هٰذِهِ الدَّارَ يَكُوْنُ أَوْ بِمَعْنٰى حَتّٰى حَتّٰى لَوْ دَخَلَ الأَوْلٰى أَوّلاً حَنَثَ وَلَوْ دَخَلَ الثَّانِيَةَ أَوّلاً بَرَّ فِىْ يَمِيْنِهِ

Sometimes 'اَوْ' comes with the meaning of unless *(which is a meaning of '**حَتّٰى**')***.** *(As in)* **The verse,**

You have no choice in the matter unless He forgives them"
(Surah Aal-Imraan: 123)

in which 'اَوْ' has the meaning of unless *('حَتّٰى'). (Based upon this)* **Our scholars say that if a person takes an oath saying, "I will not enter this house <u>or</u> this house", 'اَوْ' will have the meaning of "Unless"** *(making his oath actually mean, "I will not enter this house unless I enter this house")* **such that if he first enters the house mentioned first then his oath will break but if he first enters the house mentioned second then he will be absolved from his oath** *(as he fulfilled his vow by not entering the first house unless he first enters in the second house)***.**

<u>Example Two</u>

وَبِمِثْلِهِ لَوْ قَالَ لاَ اُفَارِقُكَ أوْ تَقْضِيَ دَيْنِيْ يَكُوْنُ بِمَعْنٰى حَتّٰى تَقْضِيَ دَيْنِيْ

Another example *(of the above, where 'اَوْ'has the meaning of unless)* **is if a person says** *(to one who owes him money)***, "I will not separate from you <u>or</u> you pay my debt** *(the money you owe me)***" which means, "Unless you pay my debt** *(the money you owe me)***".**

'حَتّٰى' indicates limit

حَتّٰى لِلْغَايَةِ كَالٰى فَاِذَا كَانَ مَا قَبْلَهَا قَابِلاً لِلامْتِدَادِ وَمَا بَعْدَهَا يَصْلُحُ غَايَةً لَه كَانَتِ الْكَلِمَةُ عَامِلَةً بِحَقِيْقَتِهَا مِثَالُه مَا قَالَ مُحَمَّدٌ رَحِمَهُ اللهُ تَعَالٰى اِذَا قَالَ عَبْدِىْ حُرٌّ اِنْ لَمْ اَضْرِبْكَ حَتّٰى يَشْفَعَ فُلاَنٌ أوْ حَتّٰى تَصِيْحَ أوْ تَشْتَكِيَ بَيْنَ يَدَىَّ أوْ حَتّٰى يَدْخُلَ اللَّيْلُ كَانَتِ الْكَلِمَةُ عَامِلَةً بِحَقِيْقَتِهَا لانَّ الضَّرْبَ بِالتَّكْرَارِ يَحْتَمِلُ الامْتِدَادَ وَشَفَاعَةُ فُلاَنٍ وَاَمْثَالُهَا تَصْلُحُ غَايَةً لِلضَّرْبِ فَلَوْ اِمْتَنَعَ عَنِ الضَّرْبِ قَبْلَ الْغَايَةِ حَنَثَ

('حَتّی') indicates limit just as 'اِلَی'. If what precedes it ('حَتّی') can be prolonged and what comes after it can be its limit then 'حَتّی' will be used for its literal meaning *(to indicate limit)*. **An example of this ('حَتّی'** *indicating the limit)***is what Imaam Muhammed has said when a person says** *(to his slave)*, **"My slave is free if I do not hit you <u>until</u> a certain person intercedes" or "My slave is free if I do not hit you <u>until</u> you scream" or "My slave is free if I do not hit you <u>until</u> you complain" or "My slave is free if I do not hit you <u>until</u> the night sets in" then ('حَتّی') will be sued for its literal meaning** *(to indicate limit)* **because to hit repeatedly can be prolonged** *(until the specified limit)* **and the intercession of a certain person and others alike it** *(screaming, complaining, night setting in)* **can be limit for hitting, thus if he stops hitting before the specified limit, his oath will break** *(and the slave will be set free)*.

Example Two

وَلَوْ حَلَفَ لاَ يُفَارِقُ غَرِيْمَه حَتّٰى يَقْضِيَه دَيْنَهُ فَفَارَقَهُ قَبْلَ قَضَاءِ الدَّيْنِ حَنَثَ

If a person takes an oath that he will not separate from his debtor <u>until</u> he pays his debt but then leaves him before the debt is paid, his oath will break.

If 'Urf' opposes the literal meaning of 'حَتّی'

فَاِذَا تَعَذَّرَ الْعَمَلُ بِالْحَقِيْقَةِ لِمَانِعٍ كَالْعُرْفِ كَمَا لَوْ حَلَفَ أَنْ يَضْرِبَهُ حَتّٰى يَمُوْتَ أَوْ حَتّٰى يَقْتُلَه حُمِلَ عَلَى الضَّرْبِ الشَّدِيْدِ بِاِعْتِبَارِ الْعُرْفِ

If practising upon the literal meaning *(of* **'حَتّی') is impeded by some hindrance such as 'Urf'** *(then the meaning of 'Urf' will be considered)*, **as in taking an oath that he will hit him**

until he dies or until he is killed, this will be taken to imply a severe hiding based upon 'Urf' *(the common usage of this term implies a sever hiding thus it will be given preference over the literal meaning)***.**

If the verb cannot be prolonged

وَاِنْ لَّمْ يَكُنِ الأَوَّلُ قَابِلاً لِلامْتِدَادِ وَالآخَرُ صَالِحًا لِلْغَايَةِ وَصَلُحَ الأَوَّلُ سَبَبًا وَالآخَرُ جَزَاءً يُحْمَلُ عَلَى الْجَزَاءِ مِثَالُه مَا قَالَ مُحَمَّدٌ رَحِمَهُ اللهُ تَعَالٰى اِذَا قَالَ لِغَيْرِهِ: عَبْدِىْ حُرٌّ اِنْ لَّمْ اٰتِكَ حَتّٰى تُغَدِّيَنِىْ فَاَتَاهُ فَلَمْ يُغَدِّهِ لاَ يَحْنَثُ لانَّ التَّغْدِيَةَ لاَ يَصْلُحُ غَايَةً لِلاتْيَانِ بَلْ هُوَ دَاعٍ اِلٰى زِيَادَةِ الاتْيَانِ وَصَلُحَ جَزَاءً فَيُحْمَلُ عَلَى الْجَزَاءِ فَيَكُوْنُ بِمَعْنٰى لاَمِ كَىْ فَصَارَ كَمَا لَوْ قَالَ اِنْ لَّمْ اٰتِكَ اِتْيَانًا جَزَاءُهُ التَّغْدِيَةُ

If what precedes it *('حَتّٰى')* **cannot be prolonged and what comes after it cannot be a limit but the first** *(what precedes 'حَتّٰى')* **has the ability to be a condition** *(Sharth)* **and the second** *(what comes after 'حَتّٰى')* **has the ability to be the result** *(consequence of the condition)***, then it** *(what comes after 'حَتّٰى')* **will be the result** *(consequence of the condition)***. An example of this** *(where the verb which precedes cannot be prolonged and what comes after cannot be a limit)* **is what Imaam Muhammed has said that when a person says to another, "My slave is free, if I do not come to you so that you can give me breakfast" after which he goes to him but does not receive breakfast, then his vow will not break** *(and the slave will not be set free)***. The reason for this is that "breakfast" cannot be a limit for coming to him but rather serves more as an incentive for coming to him and** *(breakfast)* **has the ability to be the result** *(consequence of the condition)* **because of which it will be made into the result** *(consequence of the condition)* **having the meaning of 'لِكَىْ'** *(so that)***, thus it will be as if he said, "If I do not come to you because of which you will give me breakfast** *(then my slave is free)***"** *(and since*

*the master fulfilled the condition of coming to him for breakfast, his slave will not be set free, even though the host did not serve him breakfast)***.**

وَاِذَا تَعَذَّرَ هٰذَا بِأَنْ لاَ يَصْلُحُ الآخَرُ جَزَاءً لِلأَوَّلِ حُمِلَ عَلَى الْعَطْفِ الْمَحْضِ مِثَالُه مَاقَالَ مُحَمَّدٌ رَحِمَهُ اللهُ تَعَالٰي اِذَا قَالَ عَبْدِىْ حُرٌّ اِنْ لَّمْ اٰتِكَ حَتّٰى اَتَغَدّٰى عِنْدَكَ اَلْيَوْمَ وَاِنْ لَّمْ تَأْتِنِىْ حَتّٰى تَغَدّٰى عِنْدِىَ الْيَوْمَ فَاَتَاهُ فَلَمْ يَتَغَدَّ عِنْدَهُ فِىْ ذٰلِكَ الْيَوْمِ حَنَثَ وَذٰلِكَ لانَّه لَمَّا اُضِيْفَ كُلُّ وَاحِدٍ مِنَ الْفِعْلَيْنِ اِلٰى ذَاتٍ وَاحِدٍ لاَ يَصْلُحُ اَنْ يَكُوْنَ فِعْلُه جَزَاءً لِفِعْلِهِ فَيُحْمَلُ عَلَى الْعَطَفِ الْمَحْضِ فَيَكُوْنُ الْمَجْمُوْعُ شَرْطًا لِلْبرِّ

If this *(making what precedes it condition and what comes after the result)* **is not possible because what is last** *(after '***حَتّٰى***')* **cannot be the result of what is first** *(before '***حَتّٰى***')* **then it** *('***حَتّٰى***')* **will be only for conjunction. An example of this is what Imaam Muhammed has said that if a person says, "My slave is free if I do not come to you then eat breakfast with you today" or he says, "My slave is free if you do not come to me and eat breakfast with me today" after which he comes but does not eat breakfast with him on that day, then his oath will break** *(and the slave will be set free)***. The reason for this is that when he ascribed both actions** *(of coming and eating breakfast)* **to himself, his own action cannot be a result** *(consequence of the condition)* **of his own action** *(as the second action is not in his control)* **then it will be merely for conjunction, making** *(fulfilment of)* **all** *(both coming and eating breakfast)* **a condition to be absolved** *(of the oath)***.**

'اِلَى' denotes the extremity of the limit

فصل

اِلٰى لانْتِهَاءِ الْغَايَةِ ثُمَّ هُوَ فِىْ بَعْضِ الصُّوَرِ يُفِيْدُ مَعْنٰى اِمْتِدَادِ الْحُكْمِ وَفِىْ بَعْضِ الصُّوَرِ يُفِيْدُ مَعْنَى الاسْقَاطِ فَاِنْ اَفَادَ الامْتِدَادَ لاَ تَدْخُلُ الْغَايَةُ فِى الْحُكْمِ وَاِنْ اَفَادَ الاسْقَاطَ تَدْخلُ

'اِلَى' denotes the extremity *(farthest point)* **of the limit. At times it indicates the action is prolonged** *(until the limit)* **and in some instances it indicates that the action terminates** *(at the limit)*.**If it indicates that the action is prolonged then the limit will not be included in the action** *(whatever has been ordered will be carried out until the limit and will not include or surpass that limit)* **and if it indicates that the action is terminates** *(at the limit)* **then it will be included** *(whatever has been ordered will be carried out until the limit and the limit will include and at times even surpass that limit)*.

If 'اِلَى' indicates that the action is prolonged

نَظِيْرُ الأوَّلِ اِشْتَرَيْتُ هٰذَا الْمَكَانَ اِلٰى هٰذَا الْحَائِطِ لاَ يَدْخُلُ الْحَائِطُ فِى الْبَيْعِ وَنَظِيْرُ الثَّانِىْ بَاعَ بِشَرْطِ الْخِيَارِ اِلٰى ثَلٰثَةِ أيَّامٍ وَبِمِثْلِهِ لَوْ حَلَفَ لاَ أُكَلِّمُ فُلاَنًا اِلٰى شَهْرٍ كَانَ الشَّهْرُ دَاخِلاًفِى الْحُكْمِ وَقَدْ اَفَادَ فَائِدَةَ الاسْقَاطِ هٰهُنَا

An example of the first *(where it indicates that the action has been prolonged until the limit)* **is** *(if a person says,)* **"I purchased this building until this wall" whereby the wall will not be included in the sale** *(as 'الى' indicates that the area which has been purchased extends/stretches/ prolongs until the wall and will therefore not be included in the sale)*.

An example of the second *(where it indicates that the action terminates at the limit)* **is** *(if a person)* **purchases something with the right to cancel the transaction until three days** *(by*

*saying, "I purchase this from you on condition that I have the right to cancel the transaction until three days" whereby the third day will be included and on the third day he will still have the right to cancel, as 'الی' indicates that the right to cancel the transaction terminates after three days and the right to cancel will still be valid on the third day)***.**

An example of this is if a person takes an oath, "I will not talk to a person until a month" whereby the entire month will be included in the ruling, as it indicates termination here *(it indicates the period in which he will not talk to him terminates after one month)***.**

Rulings derived from the above

وَعَلٰى هٰذَا قُلْنَا اَلْمِرْفَقُ وَالْكَعْبُ دَاخِلاَنِ تَحْتَ حُكْمِ الْغُسْلِ فِىْ قَوْلِهِ تَعَالٰى: {اِلَى الْمَرَافِقِ} لانَّ كَلِمَةَ اِلَى هٰهُنَا لِلاِسْقَاطِ فَاِنَّه لَوْلاَهَا لاَ سْتَوْعَبَتِ الْوَظِيْفَةُ جَمِيْعَ الْيَدِوَلِهٰذَا قُلْنَا اَلرُّكْبَةُ مِنَ الْعَوْرَةِ لانَّ كَلِمَةَ اِلٰى فِىْ قَوْلِهِ عَلَيْهِ السَّلاَم عَوْرَةُ الرَّجُلِ مَا تَحْتَ السُّرَّةِ اِلَى الرُّكْبَةِ تُفِيْدُ فَائِدَةَ الاسْقَاطِ فَتَدْخُلُ الرُّكْبَةُ فِى الْحُكْمِ

Based upon this *(that at times'اِلَى' will indicate that the action terminates at the limit)* **we say that the elbows and ankles are included in the order of Ghusal in the verse,**

"Wash your faces, <u>your arms up to</u>*(and including)***<u>the elbows</u>, pass wet hands over your heads and** *(wash)***<u>your feet up to</u>***(and including)***<u>your ankles</u>."** *(Surah Maa'idah: 6)*

The reason for this is that 'اِلَى' here indicates termination *(of the action of washing)* **because if it does not indicate termination then washing would extend to the entire arm** *(one would have to then wash the entire arm if the limit of washing had not been specified and in accordance with the*

*rule that when 'اِلَى' indicates the termination of an action the limit will be included in the action, we say the elbow and ankles are included in the act of washing)***.**

This *(because at times'اِلَى' will indicate that the action terminates at the limit)* **is why we say the knees are a part of the 'Aurah'** *(private area which is compulsory to conceal)* **because 'اِلَى' in the Hadeeth of Rasulullaah , "The 'Aurah' of a man is form his navel up to** *(and including)* **the knee", indicates termination** *(as the 'Aurah' would have extended up to the feet had its limit not been defined, i.e. the point of termination not indicated)* **because of which the knee is included in the ruling** *(of being part of the 'Aurah')***.**

'اِلَى' can indicate postponement

وَقَدْ تُفِيْدُ كَلِمَةُ اِلٰى تَاخِيْرَالْحُكْمِ اِلَى الْغَايَةِ وَلِهٰذَا قُلْنَا اِذَا قَالَ لامْرَأتِهِ اَنْتِ طَالِقٌ اِلٰى شَهْرٍ وَلاَ نِيَةَ لَهُ لاَ يَقَعُ الطَّلاَقُ فِى الحَالِ عِنْدَنَا خِلاَفًا لِزُفَرِ رَحِمَهُ اللهُ تَعَالٰى لانَّ ذِكْرَ الشَّهْرِ لاَ يَصْلُحُ لِمَدِّ الْحُكْمِ وَالاسْقَاطِ شَرْعًا وَالطَّلاَقُ يَحْتَمِلُ التَّأخِيْرَ بِالتَّعْلِيْقِ فَيُحْمَلُ عَلَيْهِ

At times 'اِلَى' will indicate the postponement of the action to limit indicated *(that the action will only apply when that limit is reached)* **because of which we say that if a person tells his wife, "You are divorced up to a month", without any** *(specific)* **intention then the Talaaq will not apply immediately** *(but will be postponed to the end of the month and will only apply then)* **as opposed to Imaam Zufar ** *(who says the Talaaq will apply immediately and the clause of "up to a month" will be futile)***. The reason for this** *(our proof)* **is that "up to a month" cannot indicate prolonging the action** *(of Talaaq as it is not an act which can continue repeatedly)* **nor can it indicate termination** *(when the act cannot be prolonged there is no need to indicate its limit)* **but Talaaq can be**

postponed by affixing it to the occurrence of something *(i.e. it can be made conditional, whereby it only applies on the occurrence of something)***, thus this is what it will be said to imply.**

'عَلَی'is for obligation

فصل

كَلِمَةُ عَلٰى لِلاِلْزَامِ وَاَصْلُه لافَادَةِ مَعْنَى التَّفَوُّقِ وَالتَّعَلِّىْ وَلِهٰذَا لَوْ قَالَ لِفُلاَنٍ عَلَىَّ اَلْفٌ يُحْمَلُ عَلَى الدَّيْنِ بِخِلاَفِ مَا لَوْ قَالَ عِنْدِىْ اَوْ مَعِىْ اَوْ قِبَلِىْ وَعَلٰى هٰذَا قَالَ فِى السِّيَرِ الْكَبِيْرِ: اِذَا قَالَ رَأْسُ الْحِصْنِ اٰمِنُوْنِىْ عَلٰى عَشَرَةٍ مِنْ أَهْلِ الْحِصْنِ فَفَعَلْنَا فَالْعَشَرَةُ سِوَاهُ وَخِيَارُ التَّعْيِيْنِ لَه، وَلَوْ قَالَ: اٰمِنُوْنِىْ وَعَشَرَةً أَوْ فَعَشَرَةً أَوْ ثُمَّ عَشَرَةً فَفَعَلْنَا فَكَذٰلِكَ وَخِيَارُ التَّعْيِيْنِ لِلْاٰمِنِ

'عَلَی' is for obligation *(i.e. to make something obligatory)* **and in reality it gives the meaning of superiority and elevation. Based on this** *(that 'عَلَی' makes something obligatory while providing the meaning of superiority)* **if a person says, "For a certain person, <u>upon</u> me is one thousand"** *(which is the equivalent of saying, "For a certain person, one thousand is obligatory on me")***, it will incumbent upon him as a debt** *(and not as a trust as 'عَلَی' denotes superiority as well indicating that the other person is superior to him, in that he is his creditor)* **as opposed to having said 'عِنْدِیْ'- in my possession***("For a certain person, one thousand is in my possession")***, 'مَعِیْ'- with me***("For a certain person, one thousand is with me")* **'قِبَلِیْ'- towards me** *("For a certain person, one thousand is towards me." Whereby in all three instances the thousand will be incumbent upon him as a trust and not as a debt)***.**

Based upon this *(that 'عَلَی' adds the meaning of superiority)* **it is mentioned in 'As-Siyarul Kabeer' that when the leader of**

the fort says, "Give me sanctuary upon ten of those residing in the fort" and we do then ten in addition to him *(the leader)* **will be given sanctuary and the leader will have the right to choose which ten will be given sanctuary** *(so as to fulfil the dictates of '**عَلَى**' granting him superiority over the other ten)***.** *(However)* **If he were to say, "Give me sanctuary and ten others from the fort" or "Give me sanctuary then ten others from the fort" or "Give me sanctuary thereafter ten others from the fort" and we do then it will be the same** *(sanctuary will be for ten people in addition to the leader)* **and the right to choose** *(which ten will be given sanctuary)* **will be for the one giving sanctuary** *(the Muslim leader)***.**

At times 'عَلَى' will have the meaning of the letter 'ب'

وَقَدْ يَكُوْنُ عَلٰى بِمَعْنَى الْبَاءِ مَجَازًا حَتّٰى لَوْ قَالَ بِعْتُكَ هٰذَا عَلٰى اَلْفٍ يَكُوْنُ عَلٰى بِمَعْنَى الْبَاءِ لِقِيَامِ دَلَالَةِ الْمُعَاوَضَةِ

Sometimes 'عَلَى' will have the meaning of the letter 'ب' as Majaaz such that if a person says, "I sell this to you on a thousand", 'عَلَى' will have the meaning of 'ب' *(it will be the same as saying, "I sell this to you in lieu of a thousand")* **because of proof being present that it is a transaction of exchange** *(the words "I sell" indicate this)***.**

At times 'عَلَى' will indicate a condition

وَقَدْ يَكُوْنُ عَلٰى بِمَعْنَى الشَّرْطِ قَالَ اللهُ تَبَارَكَ وَتَعَالٰى {يُبَايِعْنَكَ عَلَىٰ أَنْ لاَّ يُشْرِكْنَ بِاللهِ شَيْئًا} وَلِهٰذَا قَالَ اَبُوْحَنِيْفَةَ رَحِمَهُ اللهُ تَعَالٰى: اِذَا قَالَتْ لِزَوْجِهَا طَلِّقْنِيْ ثَلٰثًا عَلٰى اَلْفٍ فَطَلَّقَهَا وَاحِدَةً لاَ يَجِبُ الْمَالُ لانَّ الْكَلِمَةَ هٰهُنَا تُفِيْدُ مَعْنَى الشَّرْطِ فَيَكُوْنَ الثَّلٰثُ شَرْطًا لِلُزُوْمِ الْمَالِ

At times 'عَلَى' will indicate a condition, *(such as in)* **the verse,**

"Accept the pledge of allegiance from the Mu'mineen women and seek forgiveness from ALLAAH on their behalf when they come to you <u>on condition</u> that they pledge not to ascribe any partner to ALLAAH." *(Surah Maa'idah: 12)*

Based on this *(that 'على' sometimes indicates a condition)* **Imaam Abu Hanifah says that if a woman tells her husband, "I will give you one thousand on condition you give me three Talaaq" and he gives her one Talaaq then the thousand will not we Waajib** *(for her to give to her husband)* **because 'على' here indicates a condition, thus the issuing three Talaaq will be necessary for the money to be Waajib.**

'فِىْ' indicates containment

فصل

كَلِمَةُ فِىْ لِلظَّرْفِ وَبِاِعْتِبَارِ هٰذَا الأَصْلِ قَالَ اَصْحَابُنَا: اِذَا قَالَ غَصَبْتُ ثَوْبًا فِىْ مِنْدِيْلٍ أَوْ تَمْرًا فِىْ قَوْصَرَةٍ لَزِمَاهُ جَمِيْعًا

The word 'فِىْ' is used for Tharf *(to indicate that the item before it is contained within the item after it)*. **Based upon this principle** *(that 'فِىْ' is used for Tharf)* **our scholars** *(of the Hanafi Madhab)* **that if a person says, "I** *(illegally)* **seized cloth <u>in</u> a scarf" or "I** *(illegally)* **seized dates <u>in</u> a basket" then all will be Waajib** *(it will be Waajib to return the cloth along with the scarf it was taken in and the dates along with the basket it was taken in)*.

'فِیْ' is also used to denote place or time

ثُمَّ هٰذِهِ الْكَلِمَةُ تُسْتَعْمَلُ فِی الزَّمَانِ وَالْمَكَانِ وَالْفِعْلِ أَمَّا اِذَا اسْتُعْمِلَتْ فِی الزَّمَانِ بِأَنْ يَقُوْلَ اَنْتِ طَالِقٌ غَدًا فَقَالَ اَبُوْ يُوْسُفَ رَحِمَهُ اللهُ تَعَالٰی وَمُحَمَّدٌ رَحِمَهُ اللهُ تَعَالٰی يَسْتَوِیْ فِیْ ذٰلِكَ حَذْفُهَا وَاِظْهَارُهَا حَتّٰی لَوْ قَالَ اَنْتِ طَالِقٌ فِیْ غَدٍ كَانَ بِمَنْزِلَةِ قَوْلِهِ اَنْتِ طَالِقٌ غَدًا يَقَعُ الطَّلَاقُ كَمَا طَلَعَ الْفَجْرُ فِی الصُّوْرَتَيْنِ جَمِيْعًا وَ ذَهَبَ اَبُوْحَنِيْفَةَ رَحِمَهُ اللهُ تَعَالٰی اِلٰی اَنَّهَا اِذَا حُذِفَتْ يَقَعُ الطَّلَاقُ كَمَا طَلَعَ الْفَجْرُ وَ اِذَا اُظْهِرَتْ كَانَ الْمُرَادُ وُقُوْعَ الطَّلَاقِ فِیْ جُزْءٍ مِنَ الْغَدِ عَلٰی سَبِيْلِ الابْهَامِ فَلَوْلاَ وُجُوْدُ النِّيَةِ يَقَعُ الطَّلَاقُ بِأَوَّلِ الْجُزْءِ لِعَدَمِ الْمُزَاحِمِ لَه وَلَوْ نَوٰی اٰخِرَ النَّهَارِ صَحَّتْ نِيَّتُهُ وَمِثَالُ ذٰلِكَ فِیْ قَوْلِ الرَّجُلِ اِنْ صُمْتُ الشَّهْرَ فَأَنْتِ كَذَا فَاِنَّه يَقَعُ عَلٰی صَوْمِ الشَّهْرِ وَلَوْ قَالَ اِنْ صُمْتِ فِی الشَّهْرِ فَأَنْتِ كَذَا يَقَعُ ذٰلِكَ عَلٰی الامْسَاكِ سَاعَةً فِی الشَّهْرِ

Then 'فِیْ' is *(also)* **used to denote time** *(that the verb occurred in a specific time)* **and place** *(that the verb occurred in a specific place)***. If it is used to denote time such that if a person says, "You are divorced <u>in</u> tomorrow" then according to Imaam Abu Yusuf and Imaam Muhammed the ruling***(of when Talaaq will occur)*** will be the same if 'فِیْ' is mentioned or if it is omitted such that if he says, "You are divorced <u>in</u> tomorrow" it will be the same as saying, "You are divorced tomorrow", whereby the Talaaq, in both instances, will apply at first dawn** *(the next day)***.** *(On the other hand)* **Imaam Abu Hanifah is of the opinion that if 'فِیْ' is omitted** *(by saying, "You are divorced tomorrow")* **then the Talaaq will apply at first dawn** *(as this indicates the onset of the next day)* **and if 'فِیْ' is mentioned then it would imply that the Talaaq will apply in a unspecified time tomorrow and if he has no intention for a specific time then** *(only)* **will the Talaaq apply at first dawn as there is nothing else to dispute it** *(as when he does not have an intention of a*

specific time there is nothing to imply that the Talaaq was meant to apply on another time) **and if he has the intention of the evening** *(of tomorrow)* **then his intention will be correct** *(and the Talaaq will only apply on the intended time)***.**

An example of this *(how the ruling differs when 'فِىْ' is mentioned and omitted)* **is when a man says** *(to his wife)***, "If you fast a month then you are divorced", whereby the Talaaq will only apply if she fasts for a** *(complete)* **month as opposed to if he says, "If you fast <u>in</u> the month then you are divorced", whereby the Talaaq will apply if one fasts for even a brief period in the month.**

When 'فِىْ' denotes place

وَ أَمَّا فِى الْمَكَانِ فَمِثْلُ قَوْلِهِ أَنْتِ طَالِقٌ فِى الدَّارِ أَوْ فِىْ مَكَّةَ يَكُوْنُ ذٰلِكَ طَلاقًا عَلَى الاطْلاَقِ فِىْ جَمِيْعِ الأَمَاكِنِ وَبِاعْتِبَارِ مَعْنَى الظَّرْفِيَةِ قُلْنَا اِذَا حَلَفَ عَلٰى فِعْلٍ وَاَضَافَه اِلٰى زَمَانٍ اَوْ مَكَانٍ فَاِنْ كَانَ الْفِعْلُ مِمَّا يَتِمُّ بِالْفَاعِلِ يَشْتَرِطُ كَوْنُ الْفَاعِلِ فِىْ ذٰلِكَ الزَّمَانِ اَوِ الْمَكَانِ وَاِنْ كَانَ الْفِعْلُ يَتَعَدّٰى اِلٰى مَحَلٍّ يَشْتَرِطُ كَوْنُ الْمَحَلِّ فِىْ ذٰلِكَ الزَّمَانِ اَوِ الْمَكَانِ لاَنَّ الْفِعْلَ اِنَّمَا يَتَحَقَّقُ بِاَثْرِهِ وَاثْرُه فِى الْمَحَلِّ قَالَ مُحَمَّدٌ رَحِمَهُ اللهُ تَعَالٰى فِى الْجَامِعِ الْكَبِيْرِ: اِذَا قَالَ اِنْ شَتَمْتُكَ فِى الْمَسْجِدِ فَكَذَا فَشَتَمَه وَهُوَ فِى الْمَسْجِدِ وَالْمَشْتُوْمُ خَارِجَ الْمَسْجِدِ يَحْنَثُ وَلَوْكَانَ الشَّاتِمُ خَارِجَ الْمَسْجِدِ وَالْمَشْتُوْمُ فِى الْمَسْجِدِ لاَ يَحْنَثُ وَلَوْ قَالَ: اِنْ ضَرَبْتُكَ اَوْ شَجَجْتُكَ فِى الْمَسْجِدِ فَكَذَا يَشْتَرِطُ كَوْنُ الْمَضْرُوْبِ وَالْمَشْجُوْجِ فِى الْمَسْجِدِ وَلاَ يَشْتَرِطُ كَوْنُ الضَّارِبِ وَالشَّاجِّ فِيْهِ وَ لَوْ قَالَ: اِنْ قَتَلْتُكَ فِىْ يَوْمِ الْخَمِيْسِ فَكَذَا فَجَرَحَه قَبْلَ يَوْمِ الْخَمِيْسِ وَمَاتَ يَوْمَ الْخَمِيْسِ يَحْنَثُ وَلَوْجَرَحَه يَوْمَ الْخَمِيْسِ وَمَاتَ يَوْمَ الْجُمُعَةِ لاَ يَحْنَثُ

If it is used to denote place, for example when a person says *(to his wife)***, "You are divorced <u>in</u> the house" or "You are divorced <u>in</u> Makkah" then the Talaaq will apply unrestrictedly in any place** *(where it was issued even if not in the house or Makkah)***. In consideration that 'فِىْ' comes for**

Tharf *(to indicate that the verb before is occurring within the time or place specified after it)* **we say that if person takes an oath to do something and ascribes it to a time or place** *(that he will do it in a certain time or in a certain place)* **then if the action is such that it can be accomplished by the doer himself** *(and the presence of another is not required for it to be executed, known as 'F'il Laazim')* **then it is incumbent for the doer to be present in that time or place. If the action is such that it is executed on another** *(whereby the presence of another is required for it to be executed, known as 'F'il Muta'ddie')* **then it is incumbent for the one on whom the action will be done** *(Maf'ool)* **to be present in that time or place. The reason for this is that an action materialises when its effects become apparent and** *(in 'Fil Muta'die)* **its effects will become apparent on another** *(thus the presence of the other will be required in that time or place in order for the action to materialise)***.**

(An example of ''F'il Laazim' is what) **Imaam Muhammed has said in 'Al-Jaami'ul Kabeer' that if a person says, "If I swear you <u>in</u> the Masjid then you are like this** *(divorced, free, etc)***"and he then swears such that the one who swore** *(the doer)* **is in the Masjid and the one who was sworn at** *(Maf'ool)* **was out of the Masjid, his oath will break** *(and the Talaaq, freedom, etc will be in effect as swearing is an action which can be accomplished by the doer himself ('F'il Laazim') and requires the doer to be present in the Masjid when the action occurs)* **and if the one who swore** *(the doer)* **was outside the Masjid and the one who was sworn at** *(Maf'ool)* **was inside the Masjid then his oath will not break** *(because 'F'il Laazim' requires the doer to be present in the time or place when the action was carried out and since the doer was outside the Masjid when swearing his oath will not break)***.**

(An example of 'F'il Muta'ddie' whereby the action was ascribed to a place is) **If a person says, "If I hit you <u>in</u> the Masjid then you are like this** *(divorced, free, etc)***" or** *(he says)* **"If I wound you <u>in</u> the Masjid then you are like this** *(divorced, free, etc)***" then it would be necessary for the one who was struck or wounded to be in the Masjid** *(when the action of hitting or wounding is carried out for the oath to break)* **and it is not necessary for the one who hit or the one who wounded him** *(the doer)* **to be in the Masjid** *(at the time when the action was carried out)*[1]**.**

(An example of 'F'il Muta'ddie' whereby the action was ascribed to a place is) **If a person says, "If I kill you <u>in</u> a Thursday then this will happen** *(my slave will be free, etc)***" and he then attacks him the day before** *(Wednesday)* **but dies on Thursday, then his oath will break** *(as 'F'il Muta'ddie' requires that the one on whom the action is done must be present in the place or time when the action is carried out, and when the victim died on Thursday, it is established that he was killed on Thursday)* **and if he is attacks him on Thursday but he dies on Friday, then his oath will not break** *(because when the victim died on Friday, it is established that he was killed on Friday)***.**

'فِىْ' sometimes indicates a condition

وَلَوْ دَخَلَتِ الْكَلِمَةُ فِى الْفِعْلِ تُفِيْدُ مَعْنَى الشَّرْطِ قَالَ مُحَمَّدٌ رَحِمَهُ اللهُ تَعَالٰى: اِذَا قَالَ أَنْتِ طَالِقٌ فِى دُخُوْلِكِ الدَّارَ فَهُوَبِمَعْنَى الشَّرْطِ فَلاَ يَقَعُ الطَّلاَقُ قَبْلَ دُخُوْلِ الدَّارِ وَلَوْقَالَ: أَنْتِ طَالِقٌ فِىْ حَيْضَتِكِ اِنْ كَانَتْ فِى

[1] The scenarios and rulings of the above are as follows;
1) If the one who was hit or wounded was inside the Masjid when the act of hitting or wounding occurred and the doer, i.e. the one who did the hitting or wounding, was out of the masjid, then his oath will break.
2) If the one who was hit or wounded was outside the Masjid when the act of hitting or wounding occurred and the doer, i.e. the one who did the hitting or wounding, was inside the masjid, then his oath will not break.

الْحَيْضِ وَقَعَ الطَّلاَقُ فِى الْحَالِ وَ اِلاَّ يَتَعَلَّقُ الطَّلاَقُ بِالْحَيْضِ، وَفِى الْجَامِعِ لَوْ قَالَ: أَنْتِ طَالِقٌ فِىْ مَجِىْءِ يَوْمٍ لَمْ تُطَلَّقْ حَتّٰى يَطْلَعَ الْفَجْرُ وَلَوْ قَالَ: فِىْ مُضِىِّ يَوْمٍ اِنْ كَانَ ذٰلِكَ فِى اللَّيْلِ وَقَعَ الطَّلاَقُ عِنْدَ غُرُوْبِ الشَّمْسِ مِنَ الْغَدِ لِوُجُوْدِ الشَّرْطِ وَاِنْ كَانَ فِى الْيَوْمِ تُطَلَّقُ حِيْنَ تَجِىءُ مِنَ الْغَدِ تِلْكَ السَّاعَةِ وَفِى الزِّيَادَاتِ لَوْ قَالَ: اَنْتِ طَالِقٌ فِىْ مَشِيَّةِاللهِ تَعَالٰى أَوْ فِىْ اِرَادَةِ اللهِ كَانَ ذٰلِكَ بِمَعْنَى الشَّرْطِ حَتّٰى لاَ تُطَلَّقَ

If 'فِىْ' is attached to an action it will indicate that it *(what follows)* **is a condition** *(for the ruling to apply)***. Imaam Muhammed says that if a person says** *(to his wife)***, "You are divorced <u>in</u> your entrance to the house" then this has the meaning of a condition** *(it is the same as saying, "You are Divorced if you enter the house")* **and the Talaaq will not apply before entrance into the house.**

If a person says *(to his wife)***, "You are divorced <u>in</u> your menstruation"** *(which is the same as saying, "You are divorced if you menstruate")* **then the Talaaq will apply immediately if she is already menstruating and if she is not menstruating** *(at that time)* **then it will apply when her** *(next period of)* **menstruation begins.**

It is mentioned in 'Al-Jaami'ul Kabeer' it is mentioned that if a person says *(to his wife)***, "You are divorced <u>in</u> the coming of day"** *(which is the same as saying, "You are divorced if the day comes")* **then the Talaaq will not apply until the coming of dawn** *(as this will establish the coming of day)***. If he said, "You are divorced <u>in</u> the passing of a day"** *(which is the same as saying, "You are divorced if a day passes")***, if this is said at night, then the Talaaq will apply at sunset the next day because of the condition being met** *(the passing of the day has been established)***. If this** *("You are divorced in the passing of a day")* **was said during the day, then the Talaaq will apply at the same time the next day** *(as*

*this will establish that a day, which is twenty-four hours, has passed)***.**

It is mentioned in 'Ziyaadaat' that if a person says *(to his wife)***,"You are divorced in the Will of ALLAAH" or "You are divorced in the Wish of ALLAAH" then this will have the meaning of a condition** *(it will be the same as saying, "You are divorced if ALLAAH wills" or "You are divorced if ALLAAH wishes")* **such that the Talaaq will not apply** *(at all)***.**

The letter 'ب' is for correlation

فصل

حَرْفُ الْبَاءِ لِلاِلْصَاقِ فِىْ وَضْعِ اللُّغَةِ وَلِهٰذَا تَصْحَبُ الأَثْمَانَ وَتَحْقِيْقُ هٰذَا اَنَّ الْمَبِيْعَ اَصْلٌ فِى الْبَيْعِ وَالثَّمَنَ شَرْطٌ فِيْهِ وَلِهٰذَا الْمَعْنٰى هَلاَكُ الْمَبِيْعِ يُوْجِبُ اِرْتِفَاعَ الْبَيْعِ دُوْنَ هَلاَكِ الثَّمَنِ اِذَا ثَبَتَ هٰذَا فَنَقُوْلُ الاَصْلُ أَنْ يَّكُوْنَ التَّبْعُ مُلْصَقًا بِالأَصْلِ لاَ أَنْ يَكُوْنَ الأَصْلُ مُلْصَقًا بِالتَّبْعِ فَاِذَا دَخَلَ حَرْفُ الْبَاءِ فِى الْبَدْلِ فِىْ بَابِ الْبَيْعِ دَلَّ ذٰلِكَ عَلٰى اَنَّه تَبْعٌ مُلْصَقٌ بِالأَصْلِ فَلاَ يَكُوْنُ مَبِيْعًا فَيَكُوْنُ ثَمَنًا

The letter 'ب' is for correlation *(to link or associate that on which it is attached with something else)***. This is why it usually accompanies** *(is attached to)* **the price** *(in a sales transaction, known as the 'Thaman')***. This***(the reason why 'ب' will be attached to the price)* **is because the item on sale** *(Mabee'a)* **is the primary entity in a transaction and the price** *(Thaman)* **is merely a condition** *(for exchange)* **in the transaction because***(the reason why the Mabee'a is the primary entity is because)* **if the item on sale is lost** *(or destroyed)* **the transaction will have to be cancelled as opposed to when the price is lost** *(whereby another may be given in its place, thus establishing that the Mabee'a is the primary entity)***. Once this has been established we say the**

secondary object *(Thaman)* **will be attached to the primary object** *(the letter 'ب' will be attached to the Thaman)* **and not that the primary object will be attached to the secondary. Thus if the letter 'ب'is attached to an item in a sales transaction this will prove that it is the secondary object which is attaché to the primary, making it the price** *(Thaman)* **and not the item on sale** *(Mabee'a)*.

Rulings derived from the above

وَعَلٰى هٰذَا قُلْنَا اِذَا قَالَ بِعْتُ مِنْكَ هٰذَا الْعَبْدَ بِكُرٍّمِنَ الْحِنْطَةِ وَوَصَفَهَا يَكُوْنُ الْعَبْدُ مَبِيْعًا وَالْكُرُّثَمَنًا فَيَجُوْزُالاسْتِبْدَالُ بِهِ قَبْلَ الْقَبْضِ وَلَوْ قَالَ بِعْتُ مِنْكَ كُرًّا مِنَ الْحِنْطَةِ وَوَصَفَهَا بِهٰذَا الْعَبْدِ يَكُوْنَ اَلْعَبْدُ ثَمَنًا وَالْكُرُّمَبِيْعًا وَيَكُوْنُ الْعَقْدُ سَلَمًا لاَ يَصِحُّ اِلاَّ مُؤَجَّلاً

Based upon this *(that the letter 'ب' will be attached to the Thaman)* **we say that when a person says, "I sell this slave to you <u>for</u> a Kur** *(a specified measurement)* **of wheat" and describes it** *(clarifies the quality, type, and class of wheat)***, the slave will be the item on sale** *(primary object of the transaction, i.e. Mabee'a)* **and the wheat will be the price** *(secondary object of the transaction, i.e. Thaman)***, thus it will be permissible to change it** *(the wheat)* **with another before the other party takes possession of it. If he were to have said, "I sell this Kur of wheat to you (while mentioning the quality, type, and class of wheat) <u>for</u> this slave" then the slave would be the price** *(Thaman)* **and the wheat the item on sale** *(Mabee'a)***, making the transaction that of Salam, which is only permissible on credit.**

وَقَالَ عُلَمَاؤنَا اِذَا قَالَ لِعَبْدِهِ اِنْ اَخْبَرْتَنِيْ بِقُدُوْمِ فُلاَنٍ فَأَنْتَ حُرٌّ فَذَالِكَ عَلَى الْخَبَرِ الصَّادِقِ لِيَكُوْنَ الْخَبَرُمُلْصَقًا بِالْقُدُوْمِ فَلَوْ أَخْبَرَ كَاذِبًا لاَ يُعْتَقُ وَلَوْ قَالَ اِنْ اَخْبَرْتَنِي اَنَّ فُلاَنًا قَدِمَ فَأَنْتَ حُرٌّفَذٰلِكَ عَلٰى مُطْلَقِ الْخَبَرِ فَلَوْ اَخْبَرَه كَاذِبًا عُتِقَ وَلَوْ قَالَ لامْرَأتِهِ: اِنْ خَرَجْتِ مِنَ الدَّارِ اِلاَّ بِاِذْنِيْ فَأَنْتِ كَذَا

تَحْتَاجُ اِلَى الاذْنِ كُلَّ مَرَّةٍ اِذِ الْمُسْتَثْنٰى خُرُوْجٌ مُلْصَقٌ بِالاذْنِ فَلَوْ خَرَجَتْ فِى الْمَرَّةِ الثَّانِيَةِ بِدُوْنِ الاذْنِ طُلِّقَتْ وَلَوْقَالَ: اِنْ خَرَجْتِ مِنَ الدَّارِ اِلاَّ أَنْ اٰذَنَ لَكِ فَذٰلِكَ عَلَى الاذْنِ مَرَّةً حَتّٰى لَوْ خَرَجَتْ مَرَّةً اُخْرٰى بِدُوْنِ الاذْنِ لاَ تُطَلَّقُ وَفِى الزِّيَادَاتِ اِذَا قَالَ: أَنْتِ طَالِقٌ بِمَشْيَّةِ اللهِ تَعَالٰى أَوْ بِاِرَادَةِ اللهِ تَعَالٰى أَوْ بِحُكْمِهِ لَمْ تُطَلَّقْ

Our Ulama *(of the Hanafi Madhab)* **says that if a person tells his slave, "If you inform me <u>of</u> the arrival of a certain person, then you are free" this will refer to true information because informing has been correlated** *(linked of associated)* **with the arrival** *(of that person make it the same as saying, "If you inform me when that person arrives, then you are free")*, **thus if he gives him false information** *(of the arrival)* **he will not be set free.**

If he were to have said, "If you inform me that a certain person has arrived then you are free"*(without the letter 'ب')***, then this will permit any information such that if he gives him false information** *(of the person's arrival)*, **he will be set free** *(as he was only asked to be informed and did not attach it to the arrival of that person)*.

If a person tells his wife, "If you leave this house except <u>with</u> my permission then you are divorced", then permission will be required each time she leaves the house because the exception to leaving has been attached to permission *(meaning that the only time she is allowed to leave the house is if she has his permission)* **such that if she leaves the house the second time without his permission she will be divorced.**

If he were to have said, "If you leave this house except if I have permitted you then you are divorced" *(without the letter 'ب')* **then permission will only be required once such**

that if she leaves the second time without permission she will not be divorced.

It is mentioned in 'Ziyaadaat' that if a person says *(to his wife)*, **"You are divorced <u>with</u> the will of ALLAAH" or "You are divorced <u>with</u> the wish of ALLAAH" or "You are divorced <u>with</u> the order of ALLAAH" then the Talaaq will not apply** *(as the Talaaq has been correlate to the will, wish and order of ALLAAH and since the will, wish and order of ALLAAH in this regard cannot be ascertained, the Talaaq will not apply)*

Lesson on the methods of clarification

فصل فِىْ وُجُوْهِ الْبَيَان

الْبَيَانِ عَلٰى سَبْعَةِ أَنْوَاعٍ: بَيَانُ تَقْرِيْرٍ، وَبَيَانُ تَفْسِيْرٍ وَبَيَانُ تَغْيِيْرٍ، وَبَيَانُ ضَرُوْرَةٍ وَ بَيَانُ حَالٍ وَبَيَانُ عَطْفٍ وَبَيَانُ تَبْدِيْلٍ

The methods of clarification *(the manner in which the implication and purport of the speaker is clarified)* **are seven types;**

1) 'Bayaanut Taqreer'

2) 'Bayaanut Tafseer'

3)'Bayaanut Taghyeer'

4)'Bayaanudh Dharoorah'

5)'Bayaanul Haal'

6) 'Bayaanul Athaf'

7) 'Bayaanut Tabdeel'

'Bayaanut Taqreer'

أَمَّا الأَوَّلُ فَهُوَ أَنْ يَّكُوْنَ مَعْنَى اللَّفْظِ ظَاهِراً لَكِنَّه يَحْتَمِلُ غَيْرَهُ فَبَيَّنَ الْمُرَادَ بِمَا هُوَ الظَّاهِرُ فَيَتَقَرَّرُ حُكْمُ الظَّاهِرِ بِبَيَانِهِ وَمِثَالُه اِذَا قَالَ لِفُلاَنٍ عَلَيَّ قَفِيْزُ حِنْطَةٍ بِقَفِيْزِ الْبَلَدِ أَوْ أَلْفٌ مِنْ نَقْدِ الْبَلَدِ فَاِنَّه يَكُوْنُ بَيَانُ تَقْرِيْرٍ لاِنَّ الْمُطْلَقَ كَانَ مَحْمُوْلاً عَلٰى قَفِيْزِ الْبَلَدِ وَنَقْدِهِ مَعَ اِحْتِمَالِ اِرَادَةِ الْغَيْرِ فَاِذَا بَيَّنَ ذٰلِكَ فَقَدْ قَرَّرَه بِبَيَانِهِ وَكَذٰلِكَ لَوْ قَالَ لِفُلاَنٍ عِنْدِىْ اَلْفٌ وَدِيْعَةً فَاِنَّ كَلِمَةَ عِنْدِىْ كَانَتْ بِاِطْلاَقِهَا تُفِيْدُ الاَمَانَةَ مَعَ اِحْتِمَالِ اِرَادَةِ الْغَيْرِ فَاِذَا قَالَ وَدِيْعَةً فَقَدْ قَرَّرَ حُكْمَ الظَّاهِرِ بِبَيَانِهِ

As for the first *('Bayaanut Taqreer')***, when the meaning of a word is clear but has the possibility of referring to another meaning besides the literal meaning it** *('Bayaanut Taqreer')* **will clarify that the literal meaning is implied, thus establishing the implication of the clear meaning. An example of this** *('Bayaanut Taqreer')* **is when a person says, "I owe a certain person a Kafeez** *(unit of measurement)* **of wheat; <u>the Kafeez of this town</u>" or "I owe a person one thousand <u>from the currency of this town</u>". This** *(clarifying the Kafeez and the currency of a that particular town is implied)* **will be 'Bayaanut Taqreer' because if it were not mentioned then the Kafeez and currency of that town would be considered with the possibility of another being implied and when it was clarified** *(by the speaker himself)* **then it is established** *(that the Kafeez and currency of that town is implied)***.**

Similarly *(another example of 'Bayaanut Taqreer')* **is if a person says, "A thousand belonging to a certain person is in my possession <u>as trust</u>" because if he were to only say, "A thousand belonging to a certain person is in my possession" then it could imply that it is with him as a trust or through some other means** *(he owes him the money as a*

debt, or he illegally seized the money from him, etc) **and by saying, "as trust" the implication of the apparent meaning is established.**

'Bayaanut Tafseer'

فصل

وَأَمَّا بَيَانُ التَّفْسِيْرِ فَهُوَمَا اِذَا كَانَ اللَّفْظُ غَيْرُ مَكْشُوْفِ الْمُرَادِ فَكَشَفَ بِبَيَانِهِ مِثَالُه اِذَا قَالَ لِفُلاَنٍ عَلىَّ شَىٌ ثُمَّ فَسَّرَ الشَّئَ بِثَوْبٍ أوْ قَالَ عَلَىَّ عَشَرَةُ دَرَاهِمَ وَنِيْفٌ ثُمَّ فَسَّرَ النِّيْفَ أوْ قَالَ عَلَىَّ دَرَاهِمُ وَفَسَّرَهَا بِعَشَرَةٍ مَثَلاً

As for 'Bayaanut Tafseer', it is when the implication of a word which is unclear is clarified. An example of this *('Bayaanut Tafseer')* **is when a person says, "I owe a certain person something" after which he clarifies what that something is;** *(for example)* **<u>a cloth</u>, or he says, "I owe a certain person ten dirhams and something additional" after which he clarifies what that additional item is** *(e.g. a slave, etc)* **or he says, "I owe a certain person Dirhams" after which he clarifies that he owes <u>ten dirhams</u>.**

The ruling of 'Bayaanut Taqreer' and 'Bayaanut Tafseer'

وَحُكْمُ هٰذَيْنِ النَّوْعَيْنِ مِنَ الْبَيَانِ اَنْ يَّصِحُّ مَوْصُوْلاً وَ مَفْصُوْلاً

The ruling of these two types of clarification *('Bayaanut Taqreer' and 'Bayaanut Tafseer')* **is that they are valid** *(it will be considered as clarification of the ambiguity)* **whether made immediately after the initial statement or after an interval.**

'Bayaanut Taghyeer'

فصل

وَ اَمَّا بَيَانُ التَّغْيِيْرِ فَهُوَ اَنْ يَّتَغَيَّرَ بِبَيَانِهِ مَعْنٰى كَلَامِهِ وَ نَظِيْرُهُ التَّعْلِيْقُ وَ الْاِسْتِثْنَاءُ وَ قَدْ اِخْتَلَفَ الْفُقَهَاءُ فِى الْفَصْلَيْنِ فَقَالَ اَصْحَابُنَا الْمُعَلَّقُ بِالشَّرْطِ سَبَبٌ عِنْدَ وُجُوْدِ الشَّرْطِ لَا قَبْلَهُ وَ قَالَ الشَّافِعِىُّ ؒ اَلتَّعْلِيْقُ سَبَبٌ فِى الْحَالِ اِلَّا أَنَّ عَدَمَ الشَّرْطِ مَانِعٌ مِنَ الْحُكْمِ

As for 'Bayaanut Taghyeer', it is when clarification changes the implication of the *(initial)* **speech. This is possible in two ways; making the previous statement conditional** *(that the initial speech will only apply if the aforementioned condition is fulfilled)* **or exclusion** *(if part of the initial amount or constituents are excluded thereafter)***. The Fuqahaa have differed with regards to both** *(when the change is caused by making the statement conditional or by exclusion)***. Our scholars** *(of the Hanafi Madhab)* **say that a conditional statement will only apply when the condition is fulfilled and not before it and Imaam Shaafie says the conditional statement applies immediately except that that the condition will prevent it from taking effect** *(until the condition is fulfilled)***.**

The outcome of this difference of opinion

وَفَائِدَةُ الْخِلاَفِ تَظْهَرُ فِيْمَا اِذَا قَالَ لِاَجْنَبِيَّةٍ اِنْ تَزَوَّجْتُكِ فَاَنْتِ طَالِقٌ اَوْ قَالَ لِعَبْدِ الْغَيْرِ اِنْ مَلَكْتُكَ فَاَنْتَ حُرٌّ يَكُوْنُ التَّعْلِيْقُ بَاطِلاً عِنْدَه لِاَنَّ حُكْمَ التَّعْلِيْقِ اِنْعِقَادُ صَدْرِ الْكَلاَمِ عِلَّةً وَ الطَّلاَقُ وَالْعِتَاقُ هٰهُنَا لَمْ يَنْعَقِدْ عِلَّةً لِعَدَمِ اِضَافَتِهِ اِلَى الْمَحَلِّ فَبَطَلَ حُكْمُ التَّعْلِيْقِ فَلاَ يَصِحُّ التَّعْلِيْقُ وَعِنْدَنَا كَانَ التَّعْلِيْقُ صَحِيْحًا حَتّٰى لَوْ تَزَوَّجَهَا يَقَعُ الطَّلاَقُ لاَنَّ كَلاَمَه اِنَّمَا يَنْعَقِدُ عِلَّةً عِنْدَ وُجُوْدِ الشَّرْطِ وَالْمِلْكُ ثَابِتٌ عِنْدَ وُجُوْدِ الشَّرْطِ فَيَصِحُّ التَّعْلِيْقُ وَلِهٰذَا الْمَعْنٰى قُلْنَا شَرْطُ صِحَّةِ التَّعْلِيْقِ لِلْوُقُوْعِ فِىْ صُوْرَةِ عَدَمِ الْمِلْكِ اَنْ

يَّكُوْنَ مُضَافًا اِلَى الْمِلْك أوْ اِلَى سَبَبِ الْمِلْكِ حَتّٰى لَوْ قَالَ لاجْنَبِيَّةٍ اِنْ دَخَلْتِ الدَّارَ فَأَنْتِ طَالِقٌ ثُمَّ تَزَوَّجَهَا وَوُجِدَ الشَّرْطُ لاَ يَقَعُ الطَّلاَقُ

The outcome of this difference of opinion becomes apparent in the example when a person tells an unrelated woman *(a woman to whom he is not married)***, "If I marry you, then you are divorced" or he says to the slave belonging to another, "If I become your master, then you are free". According to Imaam Shaafie the condition of these statements are baseless** *(and the statement will be meaningless)* **because the ruling of making something conditional is that the initial speech** *("You are divorced" and "You are free")* **must be able to be the Illat** *(principle cause for the ruling of Talaaq and freedom to apply)* **and both Talaaq and freedom** *(the statements "You are divorced" and "You are free")* **cannot be an Illat** *(principle cause for the ruling of Talaaq and freedom to apply)* **here as they have not been attributed to individuals upon whom it can apply** *(as she is not in his wedlock nor the slave in his ownership)***, thus the requirements for making something conditional are absent and making the statement conditional is incorrect.**

According to us *(Hanafi scholars)* **making the statement conditional is correct such that if he marries her the Talaaq will apply** *(or if he purchases the slave he will be set free)* **because his statement** *("You are divorced" or "You are free")* **only becomes an Illat** *(principle cause for the ruling of Talaaq and freedom to apply)* **when the condition is fulfilled and ownership** *(being in his wedlock and in his ownership)* **is present at the time when the condition is fulfilled** *(thus the Talaaq and freedom will apply)***, thus making the statement conditional is correct.**

Due to this meaning *(that a conditional statement will only apply when the condition is fulfilled)* **we say that the**

requirement for making a statement conditional when one does not have ownership is that the condition *(which will cause the ruling to apply)* **must be gaining ownership** *(the condition for the Talaaq to apply can only made to be gaining ownership by saying, "If you become my wife, then you are divorced")* **or that which leads to ownership** *("If I marry you, then you are divorced", as marriage is what leads to "ownership")* **such that if a person says to an unrelated woman, "If you enter this house then you are divorced", then marries her and the condition fulfilled thereafter** *(i.e. she enters the house after they are married)***, the Talaaq will not apply** *(as the condition for the Talaaq to apply was not gaining ownership or what leads to ownership, which is a requirement for the validity of such conditional statements)***.**

وَكَذَالِكَ طَوْلُ الْحُرَّةِ يَمْنَعُ جَوَازَ نِكَاحِ الأمَةِ عِنْدَهُ لانَّ الْكِتَابَ عَلَّقَ نِكَاحَ الأمَةِ بِعَدْمِ الطُّوْلِ فَعِنْدَ وُجُوْدِ الطُّوْلِ كَانَ الشَّرْطُ عَدَمًا وَعَدَمُ الشَّرْطِ مَانِعٌ مِنَ الْحُكْمِ فَلاَ يَجُوْزُ وَكَذَالِكَ قَالَ الشَّافِعِيُّ رَحِمَهُ اللهُ تَعَالٰى لاَ نَفَقَةَ لِلْمَبْتُوْتَةِ اِلاَّ اِذَا كَانَتْ حَامِلاً لانَّ الْكِتَابَ عَلَّقَ الاِنْفَاقَ بِالْحَمْلِ لِقَوْلِهِ تَعَالٰى: {وَاِنْ كُنَّ اُوْلاَتِ حَمْلٍ فَأنْفِقُوْا عَلَيْهِنَّ حَتّٰى يَضَعْنَ حَمْلَهُنَّ } فَعِنْدَ عَدَمِ الْحَمْلِ كَانَ الشَّرْطُ عَدَمًا فَيَجُوْزُ نِكَاحُ الاَمَةِ وَيَجِبُ الِانْفَاقُ بِالْعُمُوْمَاتِ

Similarly having the means to marry a free woman prevents the permissibility of marrying a female slave, according to Imaam Shaafie, because the Quraan *(in the verse, "Those of you who <u>do not have the means</u> to marry free Mu'min women, then (they should marry) one of your Mu'min slave girls")* **has made permissibility of marrying a free woman conditional on not having the means to marry a free woman, thus when one has the ability** *(it would mean that)* **the condition is not present and when the condition is not present the ruling** *(of permissibility to marry a female slave)* **will not apply, thus it will not be permissible** *(to*

*marry a female slave when one has the means to marry a free woman)***.**

Similarly Imaam Shaafie says there is no maintenance for a woman who has received Talaaq Baa'inah except if she is expecting *(pregnant)* **because the Quraan has made the incumbency of maintenance** *(on the husband)* **conditional on pregnancy in the verse "If they** *(your wives)* **are expecting, then** *(you are obliged to)* **provide for them** *(maintain and house them)* **until they deliver", thus when she is not pregnant** *(it would mean that)* **the condition is not present and when the condition is not present the ruling** *(of maintenance being Waajib)* **will not apply, according to Imaam Shaafie.**

According to us *(scholars of the Hanafi Madhab)* **when the condition not being present does not prevent the ruling from applying, it is permissible to establish the ruling from other proof, thus marriage to a female slave** *(despite having the ability to marry a free woman)* **and maintenance will be compulsory because of the general nature of the verses.**

When the ruling is affixed to adjective

وَمِنْ تَوَابِعِ هٰذَا النَّوْعِ تَرَتُّبُ الْحُكْمِ عَلَى الاِسْمِ الْمَوْصُوْفِ بِصِفَةٍ فَاِنَّه بِمَنْزِلَةِ تَعْلِيْقِ الْحُكْمِ بِذَالِكَ الْوَصْفِ عِنْدَه وَعَلٰى هٰذَا قَالَ الشَّافِعِيُّ رَحِمَهُ اللهُ تَعَالٰى لاَ يَجُوْزُ نِكَاحُ الاَمَةِ الْكِتَابِيَّةِ لانَّ النَصَّ رَتَّبَ الْحُكْمَ عَلٰى أَمَةٍ مُؤْمِنَةٍ لِقَوْلِهِ تَعَالٰى: {مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ}فَيَتَقَيَّدُ بِالْمُؤْمِنَةِ فَيَمْتَنِعُ الْحُكْمُ عِنْدَ عَدَمِ الْوَصْفِ فَلاَ يَجُوْزُ نِكَاحُ الاَمَةِ الْكِتَابِيَّةِ

Also from this category is when a ruling is affixed to an adjective *(the ruling is mentioned with an adjective describing the one on whom the ruling will apply)* **which is the same as making the ruling conditional on that characteristic**

according to Imaam Shaafie *(according to Imaam Shaafie the ruling will only apply if that quality is present. Ahnaaf say that the quality being absent will not prevent the ruling from applying as it is possible for the ruling to be established by other proof)***. Based upon this Imaam Shaafie says that marriage to a female slave from the Ahlul-Kitaab** *(a Christian or Jewish female slave)* **is not permissible because the Quraan has applied the ruling to a Muslim female slave in the verse "Then (they should marry) one of your Mu'min slave girls" thus the ruling will be restricted to a Muslim female slave only and the ruling** *(of permissibility to marry a female slave)* **will not apply when the characteristic** *(of being a female slave)* **is not present, therefore marriage to a female slave from the Ahlul-Kitaab is impermissible** *(and according to us it is permissible as the absence of the quality will not prevent the ruling from applying as it can be established by other proof; namely verse)* **.**

The second method of Taghyeer; Exception

وَمِنْ صُوَرِ بَيَانِ التَّغْيِيْرِالاِسْتِثْنَاءُ ذَهَبَ اَصْحَابُنَا اِلٰى اَنَّ الاِسْتِثْنَاءَ تَكَلُّمٌ بِالْبَاقِىْ بَعْدَ الثُّنْيَا كَأنَّه لَمْ يَتَكَلَّمْ اِلاَّ بِمَا بَقِىَ وَعِنْدَه صَدْرُ الْكَلاَمِ يَنْعَقِدُ عِلَةً لِوُجُوْبِ الْكُلِّ اِلاَّ أنَّ الاِسْتِثْنَاءَ يَمْنَعُهَا مِنَ الْعَمَلِ بِمَنْزِلَةِ عَدْمِ الشَّرْطِ فِىْ بَابِ التَّعْلِيْقِ

The second manner in which 'Bayaanut Taghyeer' is possible is exception *('Istithnaa')***. Our scholars** *(of the Hanafi Madhab)* **are of the opinion that exception means discussing what is left after the exception as if he only spoke about what was not excluded** *(it is as if the excluded items were never mentioned in the first place and only what remains was discussed from the beginning)***. According to Imaam Shaafie the initial speech** *(before the exclusion)* **results in all** *(the entire amount or all the items mentioned prior to the*

exception) **becoming Waajib except that the exclusion prevents the action from being carried out on it** *(the initial items were all Waajib at first but the exclusion later prevented the action from being carried out on them)***, in the same manner as the condition not being fulfilled when a statement is made conditional** *(according to Imaam Shaafie the conditional statement applies immediately except that that the condition will prevent it from taking effect)***.**

An example of 'Bayaanut Taghyeer' by way of exception

وَمِثَالُ هٰذَا فِىْ قَوْلِهِ عَلَيْهِ السَّلاَمُ لاَ تَبِيْعُوا الطَّعَامَ اِلاَّ سَوَاءً بِسَوَاءٍ فَعِنْدَ الشَّافِعِىِّ رَحِمَهُ اللهُ تَعَالىٰ صَدْرُ الْكَلاَمِ اِنْعَقَدَ عِلَّةً لِحُرْمَةِ بَيْعِ الطَّعَامِ بِالطَّعَامِ عَلَى الاِطْلاَقِ وَخَرَجَ عَنْ هٰذِهِ الْجُمْلَةِ صُوْرَةُ الْمُسَاوَاةِ بِالاِسْتِثْنَاءِ فَبَقِىَ الْبَاقِىُ تَحْتَ حُكْمِ الصَّدْرِ وَنَتِيْجَةُ هٰذَا حُرْمَةُ بَيْعِ الْحَفْنَةِ مِنَ الطَّعَامِ بِالْحَفْنَتَيْنِ مِنْهُ وَعِنْدَنَا بَيْعُ الْحَفْنَةِ لاَ يَدْخُلُ تَحْتَ النَّصِّ لِاَنَّ الْمُرَادَ بِالْمَنْهِىِّ يَتَقَيَّدُ بِصُوْرَةِ بَيْعٍ يَتَمَكَّنُ الْعَبْدُ مِنْ اِثْبَاتِ التَّسَاوِىِّ وَالتَّفَاضُلِ فِيْهِ كَىْ لاَ يُؤَدِّىَ اِلَى نَهْىِ الْعَاجِزِ فَمَالاَ يَدْخُلُ تَحْتَ الْمَعْيَارِ الْمُسَوِّى كَانَ خَارِجًا عَنْ قَضْيَةِ الْحَدِيْثِ

An example of this *(which illustrates the outcome of this difference of opinion)* **is the Hadeeth of Rasulullaah , "Do not sell one** *(type of)* **food in exchange for another** *(type of)* **food <u>except</u> in equal quantities". According to Imaam Shaafie the initial speech becomes the principle cause for the impermissibility of selling** *(any type of)* **food in exchange for another** *(type of)* **food in whichever manner** *(it prohibits the sale of food in exchange for food whether it be in equal quantities or different)* **and the sale of it in equal quantities is then excluded from it** *(the prohibition)* **but the remainder** *(i.e. sale of food for food in other manners)* **still falls under the prohibition. The result of this is that the sale of one handful of** *(a type of)* **food for two handfuls of** *(a type of)*

food is prohibited according to Imaam Shaafie *(by the Hadeeth mentioned above)*. *(However)* **According to us the sale of a handful of food** *(for two handfuls of food)* **is not included in this Hadeeth because the prohibition is restricted to that instance wherein a person is able to establish equality** *(between the two items)*, **so that it will not be ordering a person to perform that which he is incapable of performing, thus those items in which equality cannot be established will be excluded from the implication of this Hadeeth.**

Another form of 'Bayaanut Taghyeer'

وِمِنْ صُوَرِ بَيَانِ التَّغْيِيْرِ مَا اِذَا قَالَ لِفُلاَنٍ عَلَيَّ اَلْفٌ وَدِيْعَةً فَقَوْلُه عَلَيَّ يُفِيْدُ الْوُجُوْبَ وَبِقَوْلِهِ وَدِيْعَةً غَيَّرَه اِلَى الْحِفْظِ وَقَوْلُه اَعْطَيْتَنِيْ أوْ اَسْلَفْتَنِيْ فَلَمْ اَقْبِضْهَا مِنْ جُمْلَةِ بَيَانِ التَّغْيِيْرِ وَكَذَا لَوْ قَالَ لِفُلاَنٍ عَلَيَّ اَلْفٌ زُيُوْفٌ

Also of the types of 'Bayaanut Taghyeer' is when a person says, "Upon me for a certain person is one thousand, <u>as trust</u>" as the statement "Upon me" makes it Waajib *(as debt)* **and the statement "as trust" changes it** *(from a debt)* **to safekeeping** *(trust)*. *(Another example is)* **The statements "You have given me one thousand but I have not collected it" or "You have given me one thousand for Salam** *(a credit transaction)* **but I have not collected it yet" are both examples of 'Bayaanut Taghyeer'. Similarly** *(another example of 'Bayaanut Taghyeer')* **is if a person says, "I owe a certain person one thousand, counterfeit."**

The ruling of 'Bayaanut Taghyeer'

وَحُكْمُ بَيَانِ التَّغْيِيْرِ اَنَّه يَصِحُّ مَوْصُوْلاً وَلاَ يَصِحُّ مَفْصُوْلاً ثُمَّ بَعْدَ هٰذَا مَسَائِلُ اِخْتَلَفَ فِيْهَا الْعُلَمَاءُ اَنَّهَا مِنْ جُمْلَةِ بَيَانِ التَّغْيِيْرِ فَتَصِحُّ بِشَرْطِ

الْوَصْلِ أوْ مِنْ جُمْلَةِ بَيَانِ التَّبْدِيْلِ فَلاَ تَصِحُّ وَسَيَأْتِىْ طَرْفٌ مِنْهَا فِىْ بَيَانِ التَّبْدِيْلِ

The ruling of Bayaanut Taghyeer is that it is valid *(it will be considered as clarification of the ambiguity)* **when made immediately** *(after the initial statement)* **a not after an interval.**

Then after these examples *(mentioned previously)* **of 'Bayaanut Taghyeer' there are some examples regarding which Ulama have differed as to whether they fall under 'Bayaanut Taghyeer', which is correct if mentioned immediately or of 'Bayaanut Tabdeel' which is not correct** *(whether immediate or after an interval)***. A few of them will be discussed in 'Bayaanut Tabdeel'.**

'Bayaanudh Dharoorah'

فصل

وَأمَّا بَيَانُ الضَّرُوْرَةِ فَمِثَالُه فِىْ قَوْلِهِ تَعَالٰى {وَوَرِثَه اَبَوَاهُ فَلأُمِّهِ الثُّلُثُ} أوْجَبَ الشِّرْكَةَ بَيْنَ الأبَوَيْنِ ثُمَّ بَيَّنَ نَصِيْبَ الأمِّ فَصَارَ ذَلِكَ بَيَانًا لِنَصِيْبِ الأبِ وَعَلى هٰذَا قُلْنَا اِذَا بَيَّنَ نَصِيْبَ الْمُضَارِبِ وَسَكَتَا عَنْ نَصِيْبِ رَبِّ الْمَالِ صَحَّتِ الشِّرْكَةُ وَكَذٰلِكَ لَوْ بَيَّنَا نَصِيْبَ رَبِّ الْمَالِ وَسَكَتَا عَنْ نَصِيْبِ الْمُضَارِبِ كَانَ بَيَانًا وَعَلٰى هٰذَا حُكْمُ الْمُزَارَعَةِ وَكَذٰلِكَ لَوْ اَوْصٰى لِفُلاَنٍ وَفُلاَنٍ بِألْفٍ ثُمَّ بَيَّنَ نَصِيْبَ اَحَدِهِمَا كَانَ ذٰلِكَ بَيَانًا لِنَصِيْبَ الاخَرِ

As far as 'Bayaanudh Dharoorah' is concerned *('Bayaanudh Dharoorah' is clarification from the obvious conclusion one can deduce from a statement)***, an example of this is the verse, "If he** *(or she)* **does not have any children and his parents are his only heirs, then the mother gets a third", which** *(first)* **mentions that the parents will share the estate between them and then mentions that the mother** *(of the*

deceased) **will get a third and in so doing indicates the share of the father** *(of the deceased to be the remainder as this is the unmistakable conclusion one can deduce from the above, known as 'Bayaanudh Dharoorah')***. Based upon this** *(that if the share of one party is stated then the obvious conclusion will be that the remainder will belong to the other partner)* **we say that if the share of one of the partners in Mudharabah** *(a partnership wherein one partner provides the capital and the other provides the labour)* **is stated and the share of the partner providing the capital is not stated then the partnership will be correct** *(as the obvious conclusion is that the remaining share will belong to him)***. Similarly if the share of the partner providing the capital is stated but the share of the other partner is not** *(the partnership will be correct and the obvious conclusion will be that the remaining share belongs to him)***. Based upon this** *(same ruling mentioned above for Mudharabah)* **is the ruling of Muzaara'ah** *(a partnership in farming whereby one person provides the land and the other the labour, whereby if the share of only one person is mentioned the partnership will be correct and obvious conclusion will be that the remainder will belong to other partner)***. Similarly if a person makes a bequest of a thousand for two people and then only states the share of one of them it will also clarify the share of the other** *(by means of 'Bayaanudh Dharoorah)***.**

وَلَوْ طَلَّقَ اِحْدٰى اِمْرَأَتَيْهِ ثُمَّ وَطِئَ اِحْدَاهُمَا كَانَ ذَلِكَ بَيَانًا لِلطَّلاَقِ فِى الأُخْرٰى بِخِلاَفِ الْوَطْئِ فِى الْعِتْقِ الْمُبْهَمِ عِنْدَ أَبِىْ حَنِيْفَةَ رَحِمَهُ اللهُ تَعَالٰى لانَّ حِلَّ الْوَطْئِ فِى الاِمَاءِ يَثْبُتُ بِطَرِيْقَيْنِ فَلاَ يَتَعَيَّنُ جِهَةُ الْمِلْكِ بِاِعْتِبَارِ حِلِّ الْوَطْئِ

If a person gives Talaaq to one of his two wives *(without specifying by saying, "I divorced one of my wives")* **and thereafter he indulges in sexual relations with one of them this will clarify that the Talaaq was for the other** *(and not*

for the wife with whom he indulged in sexual relations) **as opposed to indulging in sexual relations** *(with one of his slaves)* **in unspecified freedom** *(when he sets one of them free without specifying by saying, "I set one of you free" and then indulges in sexual relations with one of them then this will not clarify that other is free)* **according to Imaam Abu Hanifah because permissibility of sexual relations in slaves is permissible in two ways** *(by ownership; sexual relations is permissible with a female slave because of one having ownership of her, and by Nikaah; sexual relations is permissible because of her being in his wedlock)***, thus ownership cannot be established by the permissibility of sexual relations** *(we cannot deduce that sexual relations with her proves that he owns her, thus clarifying that the other is free, because it is possible that she could have been set free and sexual relations is permissible with her because she is in his wedlock)***.**

'Bayaanul Haal'

فصل

وَاَمَّا بَيَانُ الْحَالِ فَمِثَالُه فِيْمَا اِذَا رَأى صَاحِبُ الشَّرْعِ اَمْرًا مُعَايَنَةً فَلَمْ يَنْهَ عَنْ ذٰلِكَ كَانَ سُكُوْتَه بِمَنْزِلَةِ الْبَيَانِ اَنّه مَشْرُوْعٌ وَالشَّفِيْعُ اِذَا عَلِمَ بِالْبَيْعِ وَسَكَتَ كَانَ ذٰلِكَ بِمَنْزِلَةِ الْبَيَانِ بِأَنَّه رَاضٍ بِذٰلِكَ وَالبِكْرُالبَالِغَةُ اِذَا عَلِمَتْ بِتَزْوِيْجِ الْوَلِيِّ وَسَكَتَتْ عَنِ الرَدِّكَانَ ذٰلِكَ بِمَنْزِلَةِ الْبَيَانِ بِالرِّضَاءِ وَالاِذْنِ وَالْمَولٰى اِذَا رَأى عَبْدَه يَبِيْعُ وَيَشْتَرِىْ فِى السُّوْقِ فَسَكَتَ كَانَ ذَلِكَ بِمَنْزِلَةِ الاِذْنِ فَيَصِيْرُ مَأْذُوْنًا فِى التِّجَارَاتِ وَالْمُدَّعٰى عَلَيْهِ اِذَا نَكَلَ فِىْ مَجْلِسِ الْقَضَاءِ يَكُوْنُ الاِمْتِنَاعُ بِمَنْزِلَةِ الرِّضَاءِ بِلِزُوْمِ الْمَالِ بِطَرِيْقِ الاَقْرَارِ عِنْدَهُمَا وَبِطَرِيْقِ الْبَذْلِ عِنْدَ أَبِىْ حَنِيْفَةَ فَالْحَاصِلُ أَنَّ السُّكُوْتَ فِىْ مَوْضِعِ الْحَاجَةِ اِلَى الْبَيَانِ بِمَنْزِلَةِ الْبَيَانِ وَبِهَذَا الطَّرِيْقِ قُلْنَا الاِجْمَاعُ يَنْعَقِدُ بِنَصِّ البَعْضِ وَسُكُوْتِ الْبَاقِيْنَ

As far as 'Bayaanul Haal' is concerned *('Bayaanul Haal' is clarification which is attained by the condition or state of the speaker)***, for example if Rasulullaah ﷺ saw a specific action** *(being carried out in his presence)* **and he did not prohibit it then Rasulullaah's ﷺ silence is the same as Rasulullaah ﷺ clarifying its permissibility.** *(Based on this that principle that silence when speech is required is equivalent to speech we say)***If the Shafee'a** *(the person who has the first right of purchase)* **learns of the sale** *(of the house or land in which he has the first right to purchase)* **and he remains silent then this** *(silence)* **is the same as him clarifying that he approves of the transaction** *(to the other person and waves his right to purchase it)***.** *(Another example of silence being equivalent to speech is)* **If a mature girl learns that her Shar'ie representative** *(Walie, such as her father)* **arranged her Nikaah** *(to a certain person)* **and she remains silent, not refusing, then this will be the same as her announcing her satisfaction and consenting** *(to the marriage)***.** *(In the same manner as the examples above)* **If the master sees his slave**

buying and selling in the marketplace and remains silent then this will be the same as granting him permission to trade. *(In the same manner as the examples above)* **If the defendant refuses to take an oath** *(in refutation of the allegation against him)* **then his denial** *(of taking the oath, or in other words silence)* **will be the same as clarifying his satisfaction** *(with the amount or charge against him)* **but according to Imaam Abu Yusuf □ and Imaam Muhammed □ it will the same as a confession and according to Imaam Abu Hanifah □ it will be** *(Waajib upon him)* **as an act of generosity. The summary of the above is that silence when speech is required is the same as the same as speech** *(and clarification)***. Based upon this** *(principle that silence when speech is required is equivalent to speech)* **we say that Ijmaa** *(consensus)* **is established by the clarification of some and the silence of the few.**

'Bayaanul Athaf'

فَصْلٌ

وَ اَمَّا بيَانُ الْعَطْفِ فَمِثْلَ اَنْ تَعطفَ مَكِيْلاً اَوْ مَوْزُوْنًا عَلٰى جُمْلَةٍ مُجْمَلَةٍ يَكُوْنُ ذَلِكَ بَيَانًا لِلْجُمْلَةِ الْمُجْمَلَةِ مِثَالُه اِذَا قَالَ لِفَلاَنٍ عَلَىَّ مِائَةٌ وَدِرْهَمٌ اَوْ مِائَةٌ وَقَفِيْزٌ كَانَ الْعَطْفُ بِمَنْزِلَةِ الْبَيَانِ اَنَّ الْكُلَّ مِنْ ذٰلِكَ الْجِنْسِ وَكَذَا لَوْ قَالَ مِائَةٌ وَثَلٰثَةُ اَثْوَابٍ اَوْ مِائَةٌ وَثَلٰثَةُ دَرَاهِمَ اَوْ مِائَةٌ وَثَلٰثَةُ اَعْبُدٍ فَاِنَّه بَيَانُ اَنَّ الْمِائَةَ مِنْ ذٰلِكَ الْجِنْسِ بِمَنْزِلَةِ قَوْلِهِ اَحَدٌ وَعِشْرُوْنَ دِرْهَمًا بَخِلاَفِ قَوْلِهِ مِائَةٌ وَثَوْبٌ اَوْ مِائَةٌ وَشَاةٌ حَيْثُ لاَيَكُوْنُ ذٰلِكَ بَيَانًا لِلْمِائَةِ وَاخْتُصَّ ذٰلِكَ فِىْ عَطْفِ الْوَاحِدِ بِمَا يَصْلُحُ دَيْنًا فِى الذِّمَّةِ كَالْمَكِيْلِ وَالْمَوْزُوْنِ وَقَالَ اَبُوْ يُوْسُفَ يَكُوْنُ بَيَانًا فِىْ مِائَةٍ وَشَاةٍ وَمِائَةٍ وَثَوْبٍ عَلٰى هٰذَا الْاَصْلِ

As far as 'Bayaanul Athaf' *(whereby the ambiguity caused by the abbreviation of speech, is clarified by a conjunction; i.e. a word or sentence attached to it)* **is concerned it is like when a measurement or weight is affixed to a vague sentence making that** *(affixed measurement or weight)* **clarification of the vagueness. An example of this is if a person says, "I owe a certain person one hundred <u>and a dirham</u>" or he says, "I owe a certain person one hundred <u>and a Kafeez of wheat</u>", whereby the conjunction** *("and one dirham" or "and one Kafeez of wheat")* **clarifies that they are all of that class** *(that he owes 101 dirhams and 101 Kafeez of wheat)*. **Similarly when a person says, "I owe a certain person one hundred and three cloths" or "I owe a certain person one hundred and three dirhams" or "I owe a certain person one hundred and three slaves" it** *(the conjunction "and three cloths", "and three dirhams" and "and three slaves")* **clarifies that the entire amount is of that class** *(it clarifies that the one hundred mentioned initially in the statement also refers to cloth, dirhams or slaves respectively)* **the same as saying , "I owe a certain person twenty-one dirhams". This ruling does not apply[1] to when a person says, "I owe a certain**

[1] This form of clarification is only applies when the affixed sentence is an item which is classified as 'Makeeli' or 'Mowzooni'. Makeeli refers to items such as wheat, etc which were sold using her measuring utensil. Mowzooni refers to gold and silver which is sold in weight. If the item is not 'Makeeli' or 'Mowzooni' then it must be preceded by a numerical figure, such as in the example, "I owe a certain person one hundred and <u>three</u> cloth".

person one hundred and cloth" or "I owe a certain person one hundred and a sheep" such that this will not clarify what the one hundred is. This *(to affix something to a vague sentence)* **is only when something is affixed to that which can be a debt on him such as items which are measured by a measuring utensil or weight. Imaam Abu Yusuf** *(disagrees with the rule mentioned above and)* **says that it will act as clarification in "One hundred and a sheep" and "one hundred and a cloth" as well** *(despite it not being 'Makeeli' or Mowzooni')* **based upon this principle** *(that the ambiguity caused by the abbreviation of speech can be clarified by a conjunction)***.**

'Bayaanut Tabdeel'

فَصْلٌ

وَاَمَّا بَيَانُ التَّبْدِيْلِ وَهُوَ النَّسْخُ فَيَجُوْزُ ذٰلِكَ مِنْ صَاحِبِ الشَّرْعِ وَلاَ يَجُوْزُ ذٰلِكَ مِنَ الْعِبَادِ

As far as 'Bayaanut Tabdeel' is concerned, it is *(actually)* **Abrogation** *(Naskh, where the previous law or declaration is cancelled and replaced by another)***, which is only permissible for ALLAAH Ta'ala to do and not man.**

Exception of all is impermissible

وَعَلٰى هٰذَا بَطَلَ اِسْتِثْنَاءُ الْكُلِّ لِاَنَّه نَسْخُ الْحُكْمِ وَلاَ يَجُوْزُ الرُّجُوْعُ عَنِ الْاِقْرَارِ وَالطَّلاَقِ وَالْعِتَاقِ لِاَنَّه نَسْخٌ وَلَيْسَ لِلْعَبْدِ ذٰلِكَ

Based upon this *(that abrogation is only permissible for ALLAAH)* **exception of all from the stipulated amount is not valid** *(for example a person says, "I owe him ten dirhams except ten", whereby he excluded the entire amount which he confessed to)* **because this is abrogation of the ruling. It is**

not permissible to retract *(and thereby abrogate)* **one's confession, Talaaq, setting free as this** *(retraction)* **is Abrogation and it is not permissible for man to abrogate.**

Rulings derived from the above

وَلَوْ قَالَ لِفَلاَنٍ عَلَيَّ اَلْفٌ قَرْضٌ اَوْ ثَمَنُ الْمَبِيْعِ وَقَالَ هِيَ زُيُوْفٌ كَانَ ذٰلِكَ بَيَانُ التَّغْيِيْرِ عِنْدَهُمَا فَيَصِحُّ مَوْصُولاً وَبَيَانُ التَّبْدِيْلِ عِنْدَ أَبِيْ حَنِيْفَةَرَحِمَهُ اللهُ تَعَالٰى فَلاَ يَصِحُّ وَ اِنْ وَصَلَ وَلَوْ قَالَ لِفَلاَنٍ عَلَيَّ اَلْفٌ مِنْ ثَمَنِ الْجَارِيَةِ بَاعَنِيْهَا وَلَمْ اَقْبِضْهَا وَالْجَارِيَةُ لاَ اَثْرَ لَهَا كَانَ ذٰلِكَ بَيَانُ التَّبْدِيْلِ عِنْدَ اَبِيْ حَنِيْفَةَ رَحِمَهُ اللهُ تَعَالٰى لِاَنَّ الْاِقْرَارَ بِلَزُوْمِ الثَّمَنِ اِقْرَارٌ بِالْقَبْضِ عِنْدَ هَلَاكِ الْمَبِيْعِ اِذْ لَوْ هَلَكَ قَبْلَ الْقَبْضِ يَنْفَسِخُ الْبَيْعُ فَلاَ يَبْقٰى الثَّمَنُ لاَزِماً

If a person says, "I owe a certain person one thousand as debt" or *(he says)* **"I owe a certain person one thousand as price of this item** *(which is purchased)*" **and thereafter he says, "counterfeit** *(i.e. one thousand counterfeit)*" **then according to Imaam Abu Yusuf □ and Imaam Muhammed □ this is 'Bayaanut Taghyeer' and only correct if mentioned immediately** *(without an interval)* **and according to Imaam Abu Hanifah □ this is 'Bayaanut Tabdeel' and is not correct even if mentioned immediately** *(as abrogation of a confession is impermissible)*.

If a person says, "I owe a certain person one thousand as the price for this slave which I purchased but did not take possession of" and there is no sign of the slave, then this will be 'Bayaanut Tabdeel'*(and is impermissible resulting in the thousand still being incumbent upon him)* **according to Imaam Abu Hanifah □** *(as opposed to Imaam Abu Yusuf and Imaam Muhammed who regard this as 'Bayaanut Taghyeer')* **because confessing to owing the money** *(as price of the slave)* **is confessing to having possession at the time the purchased**

Section Two

item was lost *(as the price can only be Waajib if he had taken possession)* **and if it had been lost before taking possession** *(while still in the possession of the seller)* **then the price would not have been Waajib** *(upon him, thus his statement, "but did not take possession of it" is in actual fact an attempt to abrogate the incumbency of the thousand he confessed to owing previously, which is impermissible to do)***.**

Sunnat

اَلْبَحْثُ الثانِىْ

اَلْبَحْثُ الثَّانِىْ فِىْ سُنَّةِ رَسولِ اللهِ وَهِىَ اَكْثَرُ مِنْ عَدَدِ الرَّمَلِ وَ الْحَصٰى

The section concerns the Sunnat *(Ahaadeeth)* **of Rasulullaah □, which are more than the grains of sand and stones.**

The types of Ahaadeeth

فَصْلٌ فِيْ اَقْسَامِ الْخَبَرِ:خَبَرُ رَسُوْلِ اللهِ □ بِمَنْزِلَةِ الْكِتَابِ فِى حَقِّ لُزُوْمِ الْعِلْمِ وَالْعَمَلِ بِهِ فَاِنَّ مَنْ اَطَاعَه فَقَدْ اَطَاعَ اللهَ فَمَا مَرَّ ذِكْرُهُ مِنْ بَحْثِ الْخَاصِّ وَالْعَامِّ وَالْمُشْتَرَكِ وَالْمُجْمَلِ فِى الْكِتَابِ فَهُوَ كَذَلِكَ فِيْ حَقِّ السُنَّةِ اِلاَّ أنَّ الشُّبْهَةَ فِيْ بَابِ الْخَبَرِ فِيْ ثُبُوْتِهِ مِنْ رَسُوْلِ اللهِ وَ اِتَّصَالُهِ بِهِ وَلِهَذَا الْمَعْنٰى صَارَ الْخَبَرُ عَلٰى ثَلٰثَةِ أَقْسَامٍ قِسْمٌ صَحَّ مِنْ رَسُوْلِ اللهِ وَ ثَبَتَ مِنْهُ بِلاَ شُبْهَةٍ وَ هُوَ الْمُتَوَاتِرُ وَ قِسْمٌ فِيْهِ ضَرْبُ شُبْهَةٍ وَ هُوَ الْمَشْهُوْرُ وَقِسْمُ فِيْهِ اِحْتِمَالٌ وَ شُبْهَةٌ وَ هُوَ الاحَادُ

The Hadeeth of Rasulullaah □ is the same as the Quraan in that it is compulsory to believe in it *(that it is the true)* **and act upon it, as whoever has obeyed Rasulullaah □ has in actual fact obeyed ALLAAH. The same sections of Khaas, Aam, Mushtarak, and Mujmal, which were discussed in the section regarding the Quraan apply to Hadeeth as well. The only difference** *(between the Quraan and Sunnat)* **is doubt with regards to Hadeeth as to whether it is proven from Rasulullaah □ and links up to him. Due to this** *(that there is doubt as to whether a Hadeeth is proven to be the words of Rasulullaah □ or not)* **Hadeeth has been divided into three categories;**

The first category is that which has been authentically proven to be said by Rasulullaah □ without any doubt *(as to its authenticity)***, which is called Mutawaatir.**

The second category is that in which there is a slight amount of uncertainty, which is called Mashoor.

The third category is that which contains the possibility and doubt *(of not being the words of Rasulullaah ﷺ)*, **which is called Khabar Wahid.**

Khabar Mutawaatir

فَالْمُتَوَاتِرُ مَا نَقَلَه جَمَاعَةٌ عَنْ جَمَاعَةٍ لاَ يُتَصَوَّرُ تَوَافُقُهُمْ عَلى الْكِذْبِ لِكَثْرَتِهِمْ وَ اتَّصَلَ بِكَ هٰكَذَا مِثَالُه نَقْلُ الْقُرْآنِ وَاَعْدَادُ الرَّكَعَاتِ وَمَقَادِيْرُ الزَّكوٰةِ

Mutawaatir is that Hadeeth which has been narrated in every generation by such a large group of *(reliable)* **people that it is logically impossible for all of them to be unanimous on a lie, due to their numbers and reaches one in this very manner. An example of Hadeeth Mutawaatir is the narration of the Quraan, the number of Raqaats of Salaah and amounts for Zakaat.**

Khabar Mashoor

وَالْمَشْهُوْرُ مَا كَانَ أوَّلُه كَالاحَادِ ثُمَّ اشْتَهَرَ فِى الْعَصْرِ، اَلثَّانِىْ وَالثَّالِثِ وَ تَلَقَّتْهُ الأمَّةُ بِالْقَبُوْلِ فَصَارَ كَالْمُتَوَاتِرِ حَتّٰى اِتَّصَلَ بِكَ وَ ذٰلِكَ مِثْلُ حَدِيْثِ الْمَسْحِ عَلٰى الْخُفِّ وَالرَّجْمِ فِىْ بَابِ الزِّنَا ثُمَّ الْمُتَوَاتِرُ يُوْجِبُ الْعِلْمَ الْقَطْعِىَّ وَ يَكُوْنُ رَدُّه كُفْراً وَالْمَشْهُوْرُ يُوْجِبُ عِلْمَ الطَّمَانِيْنَةِ وَ يَكُوْنُ رَدُّه بِدْعَةً وَلاَ خِلاَفَ بَيْنَ الْعُلَمَاءِ فِىْ لُزُوْمِ الْعَمَلِ بِهِمَا وَ اِنَّمَا الْكَلاَمُ فِىْ الاحَادِ

A Mashoor Hadeeth is that Hadeeth which was Khabar Wahid in the beginning *(in the initial chain of narration, of the Sahabah, it was only reported by one or two individuals)* **but in the second** *(the age of the Taabi'een)* **and third generations** *(the Taba-Taabi'een)* **it became more well-**

known *(and was then narrated by a large number of people)* **and then accepted by the Ummat becoming like Mutawaatir** *(in the second and third generations)* **and reaching one in this manner** *(that from the second or third generation onwards it continued to be narrated by a large number of people as in Mutawaatir)***. An example of Mashoor is the Hadeeth regarding Masah on leather socks and** *(the punishment of)* **pelting the adulterer in the chapter of Zinaa** *(fornication)***.** *(The ruling of Khabar Mutawaatir and Khabar Mashoor is that)* **the authenticity** *(and veracity)* **of Mutawaatir is unquestionable such that rejection of it is Kufr** *(and renders one out of the fold of Islaam)* **and one can have confidence in Mashoor** *(which is slightly weaker than that of Mutawaatir, which is unquestionable)* **and rejection of it is Bid'ah** *(innovation)***. There is no difference of opinion amongst the Ulama that it is compulsory to practice on them both** *(Mutawaatir and Mashoor)* **but there is a difference of opinion regarding Khabar Wahid.**

Khabar Wahid

فَنَقُوْلُ خَبَرُ الْوَاحِدِ هُوَ مَا نَقَلَه وَاحِدٌ عَنِ وَاحِدٍ أَوْ وَاحِدٌ عَنْ جَمَاعَةٍ أَوْ جَمَاعَةٌ عَنْ وَاحِدٍ وَلاَ عِبْرَةَ لِلْعَدَدِ اِذَا لَمْ تَبْلُغْ حَدَّ الْمَشْهُوْرِ وَ هُوَ يُوْجِبُ الْعَمَلَ بِهِ فِىْ الاَحْكَامِ الشَّرْعِيَّةِ بِشَرْطِ اِسْلاَمِ الرَّاوِىِّ وَعَدَالَتِهِ وَضَبْطِهِ وَ عَقْلِهِ وَ اِتَّصَالُهُ بِكَ ذٰلِكَ مِنْ رَسُوْلِ الله ﷺ بِهَذَا الشَّرْطِ

We say that Khabar Wahid is that Hadeeth which one individual has reported from another individual or an individual from a group or a group from an individual. Their numbers are of no consequence *(many people narrating it does not matter)* **when their numbers do not reach that of Mashoor. It is Waajib to practice upon it in Ahkaam on condition that the narrators are Muslim, pious, have strong memory, of sound intellect and these**

requirements are found in all the narrators from Rasulullaah *(to the time it reached us)*.

Conditions of narrators

ثُمَّ الرَّاوِىْ فِى الأَصْلِ قِسْمَانِ مَعْرُوْفٌ بِالْعِلْمِ وَ الاِجْتِهَادِ كَالْخُلَفَاءِ الأَرْبَعَةِ وَ عَبْدِاللهِ بْنِ مَسْعُوْدٍ وَ عَبْدِاللهِ بْنِ عَبَّاسٍ وَ عَبْدِاللهِ بْنِ عُمَرَ وَزَيْدِ بْنِ ثَابِتٍ وَ مُعَاذِ بْنِ جَبَلٍ وَ أَمْثَالِهِمْ رَضِيَ اللهُ تَعَالىٰ عَنْهُمْ فَاِذَا صَحَّتْ عِنْدَكَ رِوَايَتُهُمْ عَنْ رَسُوْلِ اللهِ يَكُوْنُ الْعَمَلُ بِرِوَايَتِهِمْ أَوْلىٰ مِنَ الْعَمَلِ بِالْقِيَاسِ وَلِهَذَا رَوَىٰ مُحَمَّدٌرَحِمَهُ اللهُ تَعَالىٰ حَدِيْثَ الأَعْرَابِيِّ الَّذِىْ كَانَ فِىْ عَيْنِهِ سُوْءٌ فِىْ مَسَأَلَةِ الْقَهْقَهَةِ و تَرَكَ الْقِيَاسَ بِهِ وَرَوَىٰ حَدِيْثَ تَأْخِيْرِ النِّسَآءِ فِىْ مَسْأَلَةِ الْمُحَاذَاتِ وَ تَرَكَ الْقِيَاسَ بِهِ وَرَوَىٰ عَنْ عَائِشَةَ حَدِيْثَ الْقَئِ وَتَرَكَ الْقِيَاسَ بِهِ وَ رَوٰى عَنِ ابْنِ مَسْعُوْدٍ حَدِيْثَ السَّهْوِ بَعْدَ السَّلاَمِ وَ تَرَكَ الْقِيَاسَ بِهِ

Then the narrators in the first generation *(of Sahabah)* **are of two types. The first type are those narrators who were well-known for their knowledge and their ability to extract religious rulings such as the four Khulafaa (***Hadhrat Abu Bakr , Hadhrat Umar , Hadhrat Uthmaan , Hadhrat Ali ***), Hadhrat Abdullaah bin Mas'ood , Hadhrat Abdullaah bin Abbaas , Hadhrat Abdullaah bin Umar , Hadhrat Zaid**

bin Thaabit , Hadhrat Muaadh bin Jabal and other Sahabah like them, may ALLAAH be pleased with them. Thus if the narrations of these Sahabah reach you with an authentic chain then practicing upon these narrations will be better than practicing on Qiyaas *(we will disregard Qiyaas and practice upon these narrations)***.**

Based on this *(that if the narrations of these Sahabah are authentically proven, Qiyaas will be disregarded for it)* **Imaam Muhammed has narrated the Hadeeth of the villager who an ailment in his eyes[1] in the law regarding laughing***(aloud)* **in Salaah and disregarded Qiyaas for it** *(saying that Wudhu breaks if one laughs aloud in Salaah)***.**

Imaam Muhammed also narrated the Hadeeth of deferring women[2]*(to place them at the back in the last row)* **in the law of a man and woman reading Salaah next to each other and disregarded Qiyaas for it** *(saying the Salaah of the man breaks only not the woman)***.**

Imaam Muhammed also narrated the Hadeeth of Hadhrat Aisha regarding vomiting[3]*(a mouthful)* **and disregarded Qiyaas for it** *(saying that vomiting a mouthful breaks wudhu)***.**

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[1]Rasulullaah was once performing Salaah and the Sahabah were reading behind him, when a villager who an ailment in his eyes passed by and fell into a hole, which he did not see. Seeing this some of the Sahabah laughed, on which Rasulullaah remarked after the Salaah had completed, "Whomsoever amongst you laughed loudly *(while in Salaah)* should repeat his Wudhu and Salaah as well."

[2]Hadhrat Abdullaah bin Mas'ood narrates that Rasulullaah said, "Defer the woman *(place them at the back)* just as ALLAAH Ta'ala deferred their creation *(created them second after Hadhrat Aadam)* ". Since this instruction is to the men we say the Salaah of the man is broken if a woman reads next to him, as he is the one who did not fulfill what was required of him.

[3]Hadhrat Aisha has narrated that Rasulullaah said, "Whoever vomits or his nose bleeds in Salaah, he should return, perform Wudhu and continue with his Salaah (from where it broke) as long as he does not talk (between making wudhu and returning to Salaah)."

Imaam Muhammed also narrated the Hadeeth of Hadhrat Abdullaah Ibn Mas'ood of Sajdah-Sahw[1] being after Salaam and disregarded Qiyaas for it."

The second type of narrators

وَ الْقِسْمُ الثَّانِىْ مِنَ الرُّوَاةِ هُمُ الْمَعْرُوْفُوْنَ بِالْحِفْظِ وَالْعَدَالَةِ دُوْنَ الاِجْتِهَادِ وَ الْفَتْوىٰ كَأَبِىْ هُرَيْرَةَ وَ اَنَسِ بْنِ مَالِكٍ فَاِذَا صَحَّتْ رِوَايَةُ مِثْلِهِمَا عِنْدَكَ فَاِنْ وَافَقَ الْخَبَرُ الْقِيَاسَ فَلاَ خِفَاءَ فِىْ لُزُوْمِ الْعَمَلِ بِهِ وَ اِنْ خَالَفَه كَانَ الْعَمَلُ بِالْقِيَاسِ أَوْلىٰ مِثَالُه مَا رَوىٰ أَبُوْ هُرَيْرَةَ اَلْوُضُوْءَ مِمَّا مَسَّتْهُ النَّارُ فَقَالَ لَه اِبْنُ عَبَّاسٍ أَرَأَيْتَ لَوْ تَوَّضَأْتَ بِمَاءٍ سَخِيْنٍ أَكُنْتَ تَتَوَضَّأُ مِنْهُ فَسَكَتَ وَ اِنَّمَا رَدَّه بِالْقِيَاسِ اِذْ لَوْكَانَ عِنْدَه خَبَرٌ لَرَوَاهُ وَعَلٰى هَذَا تَرَكَ اَصْحَابُنَا رِوَايَةَ أَبِىْ هُرَيْرَةَ فِىْ مَسْأَلَةِ الْمُصَرَّاةِ بِالْقِيَاسِ

The second type of narrators *(from the generation of the Sahabah)* **are those who were well-known for their** *(excellent)* **memory, piety but not for their ability to extract religious rulings such as Hadhrat Abu Hurairah, Hadhrat Anas bin Maalik, etc. Thus if one of their narrations reach you authentically and it corresponds with Qiyaas then there is no doubt that it is Waajib to practice upon it but if it contradicts Qiyaas then it would be better to practice upon Qiyaas. An example of this** *(wherein their narrations contradict Qiyaas)* **is what has been narrated from Hadhrat Abu Hurairah, "Wudhu is incumbent**

[1]Hadhrat Ibn Mas'ood narrates that Rasulullaah said, "For any error in Salaah there are two Sajdahs after Salaam".

because *(of usage)* **of that which is touched by the fire** *(cooked or prepared with fire, such as meat, etc)*" **on which Hadhrat Abdullaah Ibn Abbaas asked him***(to refute his deduction)*, **"Will your Wudhu be complete if you perform Wudhu with hot water** *(which is heated by the fire)*" **on which Hadhrat Abu Hurairah remained silent. Thus Hadhrat Ibn Abbaas refuted this by Qiyaas because if Hadhrat Ibn Abbaas has a Hadeeth** *(in contradiction to this)*, **he would have narrated it. Based upon this** *(that the Qiyaas will be given preference when these types of Hadeeth contradict it)* **our scholars** *(of the Hanafi Madhab)* **disregard the narration of Hadhrat Abu Hurairah regarding 'Musarraat'**[1]*(not milking an animal for a number of days to give the impression that it produces a lot of milk)* **because of Qiyaas** *(because it contradicts Qiyaas)*.

A condition for practicing on Khabar Wahid

وَ بِاعْتِبَارِ اِخْتِلاَفِ اَحْوَالِ الرُّوَاةِ قُلْنَا شَرْطُ الْعَمَلِ بِخَبَرِ الْوَاحِدِ أَنْ لاَّ يَكُوْنَ مُخَالِفًا لِلْكِتَابِ وَالسُّنَّةِ الْمَشْهُوْرَةِ وَ أَن لاَّ يَكُوْنَ مُخَالِفًا لِلظَّاهِرِ قَالَ عَلَيْهِ السَّلاَمِ تَكْثُرُ لَكُمُ الأَحَادِيْثُ بَعْدِىْ فَاِذَا رُوِىَ لَكُمْ عَنِّىْ حَدِيْثٌ فَأَعْرِضُوْهُ عَلٰى كِتَابِ اللهِ فَمَا وَافَقَ فَاقْبَلُوْهُ وَمَا خَالَفَ فَرُدُّوْهُ

Based upon the varying conditions of the narrators *(of Hadeeth)* **we say that the condition for practicing upon Khabar Wahid is that it must not contradict the Quraan and the well-known** *(established)* **Sunnah** *(of Rasulullaah)* **and that it must not contradict the apparent** *(the common practice of the general masses)*. **Rasulullaah has said, "The number of Ahaadeeth will increase after me, thus if any of**

[1] The Hadeeth of Hadhrat Abu Hurairah in this regard is, "Do not leave the milk in the udders of the camels and goats *(i.e. not milk it for days)*, whoever sells it after this, he *(the buyer)* will have one of two choices after he milks it *(and discovers that it does not produce abundant milk as he was led to believe)*; if he desires he may keep it *(for the original price agreed upon)* and if he desires then he should return it along with a Saa'a of dates *(for the milk he extracted)*."

you learns of a Hadeeth he should compare it to the Quraan, if it concurs with it then accept and that which contradicts it should be rejected.

The substantiation that the conditions of the narrators differ

وَتَحْقِيْقُ ذَلِكَ فِيْمَا رُوِىَ عَنْ عَلِّىِّ بْنِ أبِىْ طَالِبٍ اَنَّه قَالَ كَانَتِ الرُّوَاةُ عَلٰى ثَلٰثَةِ اَقْسَامٍ مُؤْمِنٌ مُخْلِصٌ صَحِبَ رَسُوْلَ اللهِ □ وَعَرَفَ مَعْنٰى كَلاَمِهِ وَاَعْرَابِىٌّ جَآءَ مِنْ قَبِيْلَةٍ فَسِمَعَ بَعْضَ مَا سَمِعَ وَ لَمْ يَعْرِفْ حَقِيْقَةَ كَلاَمِ رَسُوْلِ اللهِ □ فَرَجَعَ اِلٰى قَبِيْلَتِهِ فَرَوٰى بِغَيْرِ لَفْظِ رَسُوْلِ اللهِ □ فَتَغَيَّرَ الْمَعْنٰى وَ هُوَ يَظُنُّ اَنَّ الْمَعْنٰى لاَ يَتَفَاوَتُ وَ مُنَافِقٌ لَمْ يُعْرَفْ نِفَاقُه فَرَوٰى مَالَمْ يَسْمَعْ وَافْتَرٰى فَسَمِعَ مِنْهُ اُنَاسٌ فَظَنُّوْهُ مُؤْمِنًا مُخْلِصاً فَرَوَوْا ذَلِكَ وَ اشْتَهَرَ بَيْنَ النَّاسِ فَلِهٰذَا الْمَعْنَى وَجَبَ عَرْضُ الْخَبَرِ عَلَى الْكِتَابِ وَالسُّنَةِ الْمَشْهُوْرَةِ

The substantiation for this *(that the conditions of the narrators vary)* **is what has been narrated from Hadhrat Ali that he said, "The conditions of the narrators are of three categories; the first is a true Mu'min who accompanied Rasulullaah □***(is amongst his close Sahabah)* **and understood the meaning of his speech, the second is a Bedouin who came from his tribe and heard some of the speech of Rasulullaah □ but did not understand the reality of Rasulullaah's □ speech and returns to his tribe and reports the narration in different words to what Rasulullaah □ said, such that it changes its meaning but he thinks that it has not changed** *(and it is what Rasulullaah □ had meant when in reality the meaning has changed)***, the third is a Munaafiq whose Nifaaq** *(hypocrisy)* **is unknown, who narrates what Rasulullaah he did not hear and fabricates** *(narrations)*

which people hear from him and thinking him to be a sincere Mu'min report these narrations to others, resulting in that narration becoming famous amongst people." This is why it is necessary to compare these Ahaadeeth to the Quraan and the well-known *(established)* **Sunnah** *(of Rasulullaah)***.**

An example of comparing a Hadeeth to the Quraan

وَ نَظِيْرُ الْعَرْضِ عَلَى الْكِتَابِ فِىْ حَدِيْثِ مَسِّ الذَّكَرِ فِيْمَا يُرْوٰى عَنْهُ مِنْ مَسِّ ذَكَرَه فَلْيَتَوَضَّأ فَعَرَضْنَاهُ عَلَى الْكِتَابِ فَخَرَجَ مُخَالِفًا لِقَوْلِهِ تَعَالىٰ {فِيْهِ رِجَالٌ يُحِبُّوْنَ أن يَّتَطَهَّرُوْا } فَاِنَّهُمْ كَانُوْا يَسْتَنْجُوْنَ بِالأَحْجَارِ ثُمَّ يَغْسِلُوْنَ بِالْمَاءِ وَلَوْ كَانَ مَسُّ الذَّكَرِ حَدَثًا لَكَانَ هٰذَا تَنْجِيْسًا لاَ تَطْهِيْرًا عَلَى الاطْلاَقِ وَكَذٰلِكَ قَوْلُه عَلَيْهِ السَّلاَمُ اَيُّمَا اِمْرَاَةٍ نَكَحَتْ نَفْسَهَا بِغَيْرِ اِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ بَاطِلٌ بَاطِلٌ خَرَجَ مُخَالِفًا لِقَوْلِهِ تَعَالىٰ {فَلاَ تَعْضُلُوْهُنَّ أَنْ يَنْكِحْنَ اَزْوَاجَهُنَّ} فَاِنَّ الْكِتَابَ يُوْجِبُ تَحْقِيْقَ النِّكَاحِ مِنْهُنَّ

An example of comparing Khabar Wahid to the Quraan is in the Hadeeth of touching one's private path, namely what has been narrated from Rasulullaah ﷺ, "Whoever touches his private parts should perform Wudhu". Therefore we compared it to the Quraan and found it to contradict the verse, "In it *(referring to the Masjid Rasulullaah ﷺ built in Qubaa)* **are men who love to be extremely pure" as** *(it has been reported that they were praised by ALLAAH because)* **they used to make Istinjaa with stones and then follow it by washing** *(their private parts)* **with water. Thus if touching the private parts did break Wudhu then this** *(method of Istinjaa)* **would have been impurifying** *(a means of rendering one into a state of impurity)* **and not purification** *(as stated in the verse)***.**

In a similar manner *(as the Hadeeth mentioned above)* **the Hadeeth of Rasulullaah , "Whichever women will perform her Nikaah without the permission of her Walie** *(father or Shar'ie representative)* **then her Nikaah is invalid, invalid, invalid" contradicts the verse, "Do not prevent them** *(the divorced women)* **from marrying their husbands" because the Quraan necessitates that the Nikaah of a women is valid** *(even if without the permission of her Walie)***.**

When Khabar Wahid contradicts Khabar Mashoor

وَمِثَالُ الْعَرْضِ عَلَى الْخَبَرِ الْمَشْهُوْرِ رِوَايَةُ الْقَضَاءِ بِشَاهِدٍ وَ يَمِيْنٍ فَاِنَّه خَرَجَ مُخَالِفًا لِقَوْلِهِ عَلَيْهِ السَّلاَمُ: اَلبَيِّنَةُ عَلَى الْمُدَّعِىْ وَالْيَمِيْنُ عَلَى مَنْ اَنْكَرَ

An example of comparing the Khabar Wahid to Khabar Mashoor is the narration[1] of verdict being passed *(by Rasulullaah)* **with one witness and** *(the accuser taking)* **an oath** *(in place of the second witness)* **which contradicts the** *(Mashoor)* **Hadeeth of Rasulullaah , "The accuser must bring a witness and the defendant must take an oath** *(if he denies the accusation)***.**

[1] The Hadeeth is, "Rasulullaah passed a verdict with an oath and one witness".

When Khabar Wahid contradicts the common practice

وَ بِاِعْتِبَارِ هٰذَا الْمَعْنٰى قُلْنَا خَبَرُ الْوَاحِدِ اِذَا خَرَجَ مُخَالِفًا لِلظَّاهِرِ لاَ يُعْمَلُ بِهِ وَمِنْ صُوَرِ مُخَالَفَةِ الظَّاهِرِ عَدْم اِشْتِهَارِ الْخَبَرِ فِيْمَا يَعُمُّ بِهِ الْبَلْوٰى فِى الصَّدْرِ الأَوَّلِ وَالثَّانِىْ لِاَنَّهُمْ لاَ يُتَّهَمُوْنَ بِالتَّقْصِيْرِ فِى مُتَابَعَةِ السُّنَّةِ فَاِذَا لَمْ يَشْتَهِرِ الْخَبَرُ مَعَ شِدَّةِ الْحَاجَةِ وَعُمُوْمِ الْبَلْوٰى كَانَ ذَلِكَ عَلاَمَةَ عَدْمِ صِحَّتِهِ

Based upon this *(that the conditions of narrators vary)* **we say that if Khabar Wahid contradicts the apparent it will not be practiced upon. An example of Khabar Wahid contradicting the apparent is when it is not the common practice of those residing in the first** *(i.e. of the Sahabah)* **and second generation** *(i.e. of the Taabi'een)* **because they cannot be accused of being deficient in practicing upon a Sunnat. Thus when a Hadeeth is not well-known amongst them, despite there being a dire necessity for it and the common practice** *(of people being contradictory to it)***, it will a sign of it not being correct.**

An example of Khabar Wahid contradicting the apparent

وَمِثَالُهُ فِى الْحُكْمِيَّاتِ اِذَا اَخْبَرَ وَاحِدٌ اَنَّ اِمْرَاْتُه حَرُمَتْ عَلَيْهِ بِالرَّضَاعِ الطَّارِئْ جَازَ اَنْ يَعْتَمِدَ عَلىٰ خَبَرِهِ وَ يَتَزَوَّجَ اُخْتَهَا وَ لَوْ اَخْبَرَ اَنَّ الْعَقْدَ كَانَ بَاطِلاً بِحُكْمِ الرَّضَاعِ لاَ يُقْبَلُ خَبَرُه وَكَذٰلِكَ اِذَا اُخْبِرَتِ الْمَرْاَةُ بِمَوْتِ زَوْجِهَا اَوْ طَلاَقِهِ اِيَّاهَا وَ هُوَ غَائِبٌ جَازَ اَنْ تَعْتَمَدَ عَلىٰ خَبَرِهِ وَ تَتَزَوَّجَ بِغَيْرِهِ وَلَو اشْتَبَهَتْ عَلَيْهِ الْقِبْلَةَ فَاَخْبَرَه وَاحِدٌ عَنْهَا وَجَبَ الْعَمَلُ بِهِ وَلَوْ وَجَدَ مَاءً لاَ يَعْلَمُ حَالَه فَاَخْبَرَه وَاحِدٌ عَلَى النَّجَاسَةِ لاَ يَتَوضَّأ بِهِ بَلْ تَيَمَّمُ

An example of Khabar Wahid contradicting the apparent in the laws of Shari'ah is when a person informs him that his wife has become Haraam upon him through fostering, during the period she is still being nursed, then it is permissible to rely upon his information and it will be permissible to marry her sister *(as it will not result in having two sisters in his wedlock)*. *(However)* **If he were to inform him that his Nikaah was invalid because of her being his foster sister** *(at the time when the Nikaah occurred)* **then this information will be rejected** *(as it contradicts the apparent, which is that she is not his foster sister as it is impossible that this information could not have been known by anyone else at the time of the Nikaah)***.**

Similarly if a woman is informed of the death of her husband or that he divorced her, when he is not present, then it will be permissible to rely upon his information and remarry *(but if he is present then it will not be permissible to rely on his information because it contradicts the apparent as it impossible for to be unaware of his death or Talaaq if he is present***.**

If a person is in doubt as to which direction is the Qiblah *(and is unable to ascertain its direction)* **and one person informs him** *(of the direction of the Qiblah)* **then it is Waajib upon him to act upon it** *(and perform Salaah in that direction as it does not contradict the apparent)***.**

If a person comes across water and is uncertain as to whether it is pure or not and one person informs him that it is impure then he will not make Wudhu with it and will perform Tayammum *(as this does not contradict the apparent as opposed to if he is unsure about the water and one person informs him that it is impure but that water is commonly used by everyone then his information will not be accepted and it will be Waajib upon him to make Wudhu with that water).*

Khabar Wahid can be mentioned four instances

فَصْلٌ

خَبَرُ الوَاحِدِ حُجَّةٌ فِىْ اَرْبَعَةِ مَوَاضِعِ خَالِصُ حَقِّ اللهِ تَعَالىٰ مَا لَيْسَ بِعُقُوْبَةٍ وَ خَالِصُ حَقِّ الْعَبْدِ مَا فِيْهِ اِلْزَامٌ مَحْضٌ وَ خَالِصُ حَقِّهِ مَالَيْسَ فِيْهِ اِلْزَامٌ مِنْ وَجْهٍ اَمَّا الْاَوَّلُ فَيُقْبَلُ فِيْهِ خَبَرُ الْوَاحِدِ فَاِنَّ رَسُوْلَ اللهِ □ قَبِلَ

شَهَادَةَ الْاَعْرَابِيِّ فِيْ هِلاَلِ رَمَضَانَ وَ اَمَّا الثَّانِيْ فَيُشْتَرَطُ فِيْهِ الْعَدَدُ وَ الْعَدَالَةُ وَ نَظِيْرُه الْمُنَازِعَاتُ وَ اَمَّا الثَّالِثُ فَيُقْبَلُ فِيْهِ خَبَرُ الْوَاحِدِ عَدْلاً كَانَ اَوْ فَاسِقًا وَ نَظِيْرُهُ الْمُعَامَلاَتُ اَمَّا الرَّابِعُ فَيُشْتَرَ طُ فِيْهِ اِمَّا الْعَدَدُ اَوِ الْعَدَالَةُ عِنْدَ أَبِيْ حَنِيْفَةَ وَ نَظِيْرُهُ الْعَزْلُ وَالْحَجْرُ

Khabar Wahid can be mentioned in four instances;

The first is regarding that which is purely the right of ALLAAH but not a *(Shar'ie)* **punishment** *(such as Salaah, Zakaah, etc)***.**

The second is regarding that which is purely the right of man which entails making something incumbent upon another *(such as a debt, etc)***.**

The third is regarding that which is purely the right of man which does not entail making something incumbent upon another *(such as informing someone that he has been anointed as a representative of another, etc)***.**

The fourth is regarding that which is purely the right of man which to an extent entails making something incumbent upon another *(revoke the right for one to act as his representative, etc)***.**

As far as the first is concerned *(that which is purely the right of ALLAAH but not a Shar'ie punishment)* **Khabar Wahid is accepted in it as Rasulullaah accepted the testimony of one Bedouin regarding the sighting of the crescent of Ramadaan.**

As far as the second is concerned *(that which is purely the right of man which entails making something incumbent upon another)* **quantity and faithfulness is required** *(there must be two or more witnesses in order for the testimony to be accepted)* **an example of which is monetary disputes.**

Section Three

As far as the third is concerned *(that which is purely the right of man which does not entail making something incumbent upon another)* **Khabar Wahid is accepted in it whether it be from one who is pious or a sinner. An example of this is transactions** *(such as appointing someone as your representative in a sales transaction)***.**

As far as the fourth is concerned *(that which is purely the right of man which to an extent entails making something incumbent upon another)* **according to Imaam Abu Hanifah either piety or quantity is required** *(if one pious person provides the information then it is accepted and if they are not pious but are two or more than it will be accepted)* **an example of this is revoking the right for one to act as one's representative and revoking the right for one's slave to trade.**

Ijmaa

اَلْبَحْثُ الثَّالِثُ فِى الاِجْمَاعِ

فَصْلٌ اِجْمَاعُ هٰذِهِ الأمَّةِ بَعْدَ مَا تَوَفِّى رَسُوْلُ اللهِ فِىْ فُرُوْعِ الدِّيْنِ حُجَّةٌ مَوْجِبَةٌ لِلْعَمَلِ بِهَا شَرْعًا كَرَامَةً لِهٰذِهِ الأمَّةِ

The Ijmaa *(consensus)* **of this Ummat after the demise of Rasulullaah regarding laws of Deen is a proof which is Waajib to practice upon according to Shari'ah, as an honour to this Ummat.**

Ijmaa is of four types

ثُمَّ الاِجْمَاعُ عَلٰى أرْبَعَةِ أقْسَامٍ اِجْمَاعُ الصَّحَابَةِ عَلٰى حُكْمِ الْحَادِثَةِ نَصًّاثُمَّ اِجْمَاعُهُمْ بِنَصِّ الْبَعْضِ وَسُكُوْتِ الْبَاقِيْنَ عَنِ الرَدِّ ثُمَّ اِجْمَاعُ مَنْ بَعْدَهُمْ فِيْمَا لَمْ يُوْجَدْ فِيْهِ قَوْلُ السَّلَفِ ثُمَّ الاجْمَاعُ عَلٰى أحَدِ أقْوَالِ السَّلَفِ أمَّا الأوَّلُ فَهُوَ بِمَنْزِلَةِ اٰيَةٍ مِنْ كِتَابِ اللهِ تَعَالٰى ثُمَّ اِجْمَاعُ الْبَعْضِ وَسُكُوْتُ الْبَاقِيْنَ فَهُوَ بِمَنْزِلَةِ الْمُتَوَاتِرِ ثُمَّ اِجْمَاعُ مَنْ بَعْدَهُمْ بِمَنْزِلَةِ الْمَشْهُوْرِ مِنَ الأخْبَارِ ثُمَّ اِجْمَاعُ الْمُتَأخِّرِيْنَ عَلٰى أحَدِ أقْوَالِ السَّلَفِ بِمَنْزِلَةِ الصَّحِيْحِ مِنَ الاحَادِ

Then Ijmaa is of four types;

1- Ijmaa of the Sahabah on the ruling of an incident with clarification from all *(that is they all voiced their approval of the ruling passed)***.**

2- Ijmaa of the Sahabah by clarification from some and the silence of the rest from any refutation *(a few of the Sahabah voiced their approval and the remaining Sahabah did not refute it, which indicates that they agree with the ruling passed)***.**

3- Ijmaa of those that came after them *(the Taabi'een and Mujtahideen)* **on those laws regarding which they did not find any clarification from the predecessors** *(i.e. the Sahabah)***.**

4- Ijmaa of the later scholars on one of the *(from the diverse)* **opinions of the predecessors** *(Sahabah)***.**

The ruling of the first *(Ijmaa of the Sahabah on the ruling of an incident with clarification from all)* **is that it is similar to a verse from the Quraan** *(it will be practiced upon without any doubt and denial of it is Kufr)***.**

Then the ruling of the Ijmaa of the Sahabah by clarification from some and silence of the rest from refutation is that it is similar to Khabar Mutawaatir *(it will be practised upon without any doubt but denial of it will not result in Kufr)***.**

Then the Ijmaa of those that came after them *(the Taabi'een and Mujtahideen on those laws regarding which they did not find any clarification from the predecessors)* **is similar to Khabar Mashoor** *(it will be practised upon with conviction)***.**

Then Ijmaa of the latter scholars on one of the *(from the diverse)* **opinions of the predecessors is similar to the authentic Ahaadeeth of Khabar Wahid** *(it will be practiced upon with the possibility of it being incorrect but will be given precedence over Qiyaas)***.**

Whose Ijmaa will be considered

وَالْمُعْتَبَرُ فِىْ هٰذَا الْبَابِ اِجْمَاعُ اَهْلِ الرَّأْىِ وَ الاِجْتِهَادِ فَلاَ يُعْتَبَرُ بِقَوْلِ الْعَوَّامِ وَالْمُتَكَلِّمِ و الْمُحَدِّثِ الَّذِىْ لاَ بَصِيْرَةَ لَه فِىْ اُصُوْلِ الْفِقْهِ

The Ijmaa which is considered in this chapter is the Ijmaa of those being expert in the fields of Fiqh *(jurisprudence)* **and Ijtihaad** *(deriving rulings)*, **thus the opinions** *(or consensus)* **of the general masses, Mutakalimeen** *(those who deliberate over Aqaaid)* **and those Muhadditheen who lack competency in Fiqh will not be considered.**

Ijmaa is divided into two categories

ثُمَّ بَعْدَ ذَلِكَ الاِجْمَاعُ عَلىٰ نَوْعَيْنِ مُرَكَّبٌ وَغَيْرُ مُرَكَّبٍ فَالْمُرَكَّبُ مَا اجْتُمِعَ عَلَيْهِ الآرَاءُ عَلىٰ حُكْمِ الْحَادِثَةِ مَعَ وُجُوْدِ الاِخْتِلاَفِ فِى الْعِلَّةِ وَمِثَالُه الاِجْمَاعُ عَلىٰ وُجُوْدِ الاِنْتِقَاضِ عِنْدَ الْقَيِ وَمَسِّ الْمَرْأَةِ أَمَّا عِنْدَنَا فَبِنَاءً عَلىَ الْقَيِ وَأَمَّا عِنْدَهٗ فَبِنَاءً عَلَى الْمَسِّ ثُمَّ هٰذَا النَّوْعُ مِنَ الاجْمَاعِ لاَ يَبْقٰى حُجَّةً بَعْدَ ظُهُوْرِ الْفَسَادِ فِىْ أَحَدِ الْمَأخَذَيْنِ حَتّٰى لَوْ ثَبَتَ أَنَّ الْقَىَ غَيْرُ نَاقِضٍ فَأَبُوْحَنِيْفَةَ لاَ يَقُوْلُ بِالاِنْتِقَاضِ فِيْهِ وَلَوْ ثَبَتَ أَنَّ الْمَسَّ غَيْرُ نَاقِضٍ فَالشَّافِعِىُّ لاَ يَقُوْلُ بِالانْتِقَاضِ فِيْهِ لِفَسَادِ الْعِلَّةِ الَّتِىْ بُنِىَ عَلَيْهَا الْحُكْمُ

Then Ijmaa is divided into two categories; Murakkab and Ghair Murakkab.

Ijmaa Murakkab[1] is that Ijmaa in which there is consensus regarding the ruling *(the ruling is the same according to all)* **but there is difference in opinion regarding the Illat** *(each differs in the manner that the ruling is derived)***. An example of this** *(Ijmaa Murakkab)* **is the Ijmaa of the nullification of Wudhu when a person vomits** *(a mouthful)* **and touches a woman** *(there is Ijmaa on the ruling that his Wudhu is nullified but there is difference of opinion regarding the manner in which it broke)***. According to us** *(Hanafi scholars)* **his wudhu breaks because of vomiting** *(a mouthful)* **whereas according to Imaam Shaafie □ it breaks because of him touching a woman. Thus this Ijmaa will no longer remain when one of the Illat** *(on which either Imaam based his ruling)* **no longer remains such that if it is established that the vomiting did not break his wudhu** *(in that he vomited less than a mouthful)* **then Imaam Abu Hanifah □ will no longer rule that his Wudhu is nullified and if it is established that his touching did not break wudhu** *(in that he did not touch her skin to skin)* **then Imaam Shaafie □ will no longer rule that his wudhu is nullified because the Illat on which the ruling was based no longer remains.**

A reply to an objection

وَ الْفَسَادُ مُتَوَهَّمٌ فِىْ الطَّرَفَيْنِ لِجَوَازِ أَنْ يَّكُوْنَ أَبُوْحَنِيْفَةَ مُصِيْباً فِىْ مَسْئَلَةِ الْمَسِّ مُخْطِئًا فِىْ مَسْئَلَةِ الْقَئِ وَالشَّافِعِىُّ رَحِمَهُ اللهُ تَعَالٰى مُصِيْبًا فِىْ مَسْئَلَةِ الْقَئِ مُخْطِئًا فِىْ مَسْئَلَةِ الْمَسِّ فَلاَ يُؤَدِّىْ هٰذَا اِلىٰ بِنَاءِ وُجُوْدِ الاِجْمَاعِ عَلٰى البَاطِلِ بِخِلاَفِ مَا تَقَدَّمَ مِنَ الاِجْمَاعِ فَالْحَاصِلُ اَنَّه جَازَ اِرْتِفَاعُ هٰذَا الاِجْمَاعِ لِظُهُوْرِ الْفَسَادِ فِيْمَا بُنِىَ هُوَ عَلَيْهِ

[1] Ijmaa Ghair Murakkab is the opposite of Ijmaa Murakkab wherein there is consensus regarding the ruling and the Illat, such that there is no possibility of the Ijmaa not remaining.

(If one were to object by saying that this form of Ijmaa is invalid because each Imaam has a totally opposite view wherein only one can be right thus opposing the very meaning of consensus, we would say) **The likelihood of error is possible from both sides as it is possible that Imaam Abu Hanifah is correct** *(in his view)* **on touching a woman** *(that in reality it does not break Wudhu)* **and in error regarding vomiting** *(that in reality it does not break Wudhu)* **and Imaam Shaafie could be correct in the ruling of vomiting** *(that in reality it does not break Wudhu)* **and in error regarding touching a woman** *(that in reality it does not break Wudhu)***. Thus this** *(possibility of each being in error)* **will not establish that this form of Ijmaa is baseless** *(because the possibility of error is mere speculation and doubt)***.** *(Ijmaa Murakkab will no longer remain when one of the Illat on which either Imaam based his ruling no longer remains)***As opposed to what was mentioned previously of** *(the categories)* **Ijmaa** *(referring to Ijmaa Ghair Murakkab, which does not have the possibility of not remaining because of a difference of opinion in Illat)***.**

The conclusion is that it is permissible for this Ijmaa to no longer remain by the Illat on which the rulings are based no longer remaining.

Examples of the above

وَ لِهَذَا اِذَا قَضَى الْقَاضِىْ فِىْ حَادِثَةٍ ثُمَّ ظَهَرَ رِقُّ الشُّهُوْدِ أوْكِذْبُهُمْ بِالرُّجُوْعِ بَطَلَ قَضَاؤُه وَاِن لَّمْ يَظْهَرْ ذٰلِكَ فِىْ حَقِّ الْمُدَّعِىِّ وَ بِاِعْتِبَارِ هٰذَا الْمَعْنٰى سَقَطَتِ الْمُؤَلَّفَةُ قُلُوْبُهُمْ عَنِ الأَصْنَافِ الثَّمَانِيَةِ لانْقِطَاعِ الْعِلَّةِ وَسَقَطَ سَهْمُ ذَوِى الْقُرْبٰى لاِنْقِطَاعِ عِلَّتِهِ وَعَلٰى هٰذَا اِذَا غَسَلَ الثَّوْبَ النَّجِسَ بِالْخَلِّ فَزَالَتِ النَّجَاسَةُ بِحُكْمِ طَهَارَةِ الْمَحَلِّ لاِنْقِطَاعِ عِلَّتِهَا وَبِهَذَا ثَبَتَ الْفَرْقُ بَيْنَ الْحَدَثِ وَ الْخَبْثِ فَاِنَّ الْخَلَّ يُزِيْلُ النَّجَاسَةَ عَنِ الْمَحَلِّ فَأَمَّا الْخَلُّ لاَ يُفِيْدُ طَهَارَةَ الْمَحَلِّ وَاِنَّمَا يُفِيْدُهَا اَلْمُطَهِّرُ وَ هُوَ الْمَآءُ

Therefore *(since Ijmaa Murakkab will no longer remain if the Illat no longer remains)* **when the Qaadhi makes a decision in a case** *(based on testimony of witnesses)* **and thereafter it is discovered that the witnesses were slaves or that they were lying as they retracted their testimony then the decision of the Qaadhi will be invalid***(as the Illat on which the ruling was based has changed)***, even though this will not affect the right of the claimant** *(and the decision made in his favour will remain and the result of this invalidation will affect the witnesses and defendant in that the witnesses will now be responsible for repayment to the defendant)***.**

Based upon this *(that the ruling will change if the Illat changes)* **when impure clothing is washed with vinegar and the Impurity is removed then it will be declared to be pure as the Illat** *(which makes it impure)* **no longer remains.**

This establishes the difference between Hadath *(being in a state of lesser impurity)* **and Impurity** *(such as urine, stool, etc)* **as vinegar removes the impurity from the object but vinegar does aid in purification of the object** *(the object will be ruled to be pure because of the impurity, which caused it to be ruled as impure, being removed and not that it has been purified)***. That which benefits purification is water.**

Sub-division of Ijmaa

ثُمَّ بَعْدَ ذَلِكَ نَوْعٌ مِنَ الاِجْمَاعِ وَ هُوَ عَدْمُ الْقَائِلِ بِالْفَصْلِ وَذٰلِكَ نَوْعَانِ اَحَدُهُمَا مَا اِذَا كَانَ مَنْشَأَ الْخِلَافِ فِى الْفَصْلَيْنِ وَاحِداً وَالثَّانِىْ مَااِذَا كَانَ الْمَنْشَأَ مُخْتَلِفًا وَالأَوَّلُ حُجَّةٌ وَالثَّانِىْ لَيْسَ بِحُجَّةٍ مِثَالُ الأَوَّلِ فِيْمَا خَرَّجَ الْعُلَمَاءُ مِنَ الْمَسَائِلِ الْفِقْهِيَّةِ عَلٰى اَصْلٍ وَاحِدٍ وَنَظِيْرُه اِذَا أَثْبَتْنَا اَنَّ النَّهْىَ عَنِ التَّصَرُّفَاتِ الشَّرْعِيَّةِ يُوْجِبُ تَقْرِيْرَهَا قُلْنَا يَصِحُّ النَّذْرُ بِصَوْمِ يَوْمِ النَّحْرِ وَ الْبَيْعُ الْفَاسِدُ يُفِيْدُ الْمِلْكَ لِعَدَمِ الْقَائِلِ بِالْفَصْلِ وَ لَوْ قُلْنَا اِنَّ التَّعْلِيْقَ

سَبَبٌ عِنْدَ وُجُوْدِ الشَّرْطِ قُلْنَا تَعْلِيْقُ الطَّلَاقِ وَ الْعِتَاقِ بِالْمِلْكِ أَوْ سَبَبِ الْمِلْكِ صَحِيْحٌ

After this *(explanation of the categories of Ijmaa explained above)* **is another type of Ijmaa and that is 'Adamul Qaa'il bil Fasl'** *(wherein each of the Fuqahaa do not differ in their rulings regarding the laws of Shari'ah which they derive from a certain principle)***, which is of two types. One type is that in which the method of disagreement in both** *(or a number of)* **rulings is the same and the second type is that in which the method of disagreement is different. The first** *(that in which the method of disagreement in both rulings is the same)* **is a valid Shar'ie proof and the second** *(that in which the method of disagreement is different)* **is not a valid Shar'ie proof.**

An example of the first *(that in which the method of disagreement in both rulings is the same)* **is all those Fiqhi rulings which the Ulama derived based on one principle, for example when we established that the prohibition of an act necessitates that the act be valid, we said a vow to fast on the day of Eid is correct** *(and will be valid)* **and an invalid sales transaction will establish ownership** *(fort the buyer)* **with 'Adamu Qaa'il bil Fasl'** *(those Ulama who state that the prohibition of an act necessitates that the act be valid, state that the vow is correct and the sale will establish ownership and do not differentiate between the two. The same goes for those who say that that a prohibition of an act does not necessitate that it be valid, i.e. they say that the vow is incorrect and the sale does not establish ownership)***.**

(Another example of 'Adamu Qaa'il bil Fasl' is) **When we said that making something conditional will cause the ruling to apply** *(only)* **when the condition is fulfilled, we** *(also)* **said that making** *(the issuing of)* **Talaaq and setting** *(a slave)* **free conditional on ownership or that which leads to ownership**

*(such as Nikaah)***is correct** *(those Ulama who state that the ruling will only apply when the condition is fulfilled, state that the Talaaq and freedom will only apply when the condition to which it was attached is fulfilled, as long as the condition was such an act which establishes ownership, that is the right to issue Talaaq or set the slave free and do not differentiate between the two. The same goes for those who say that that the ruling will apply immediately but will be postponed until the condition is fulfilled, i.e. they say the Talaaq and freedom will not be valid since it applies immediately but is postponed due to the condition and at the time when the Talaaq applied he did not have the authority to issue Talaaq or set the slave free)***.**

وَ كَذَا لَوْ اَثْبَتْنَا اَنَّ تَرَتُّبَ الْحُكْمِ عَلٰى اِسْمٍ مَوْصُوْفٍ بِصِفَةٍ لَا يُوْجِبُ تَعْلِيْقَ الْحُكْمِ بِهِ قُلْنَا طَوْلُ الْحُرَّةِ لَا يَمْنَعُ جَوَازَ نِكَاحِ الأَمَةِ اِذْ صَحَّ بِنَقْلِ السَّلْفِ اَنَّ الشَّافِعِىَّ فَرَّعَ مَسْئَالَةَ طَوْلِ الْحُرَّةِ عَلٰى هٰذَا الْأَصْلِ وَ لَوْ اَثْبَتْنَا جَوَازَ نِكَاحِ الأَمَةِ الْمُؤْمِنَةِ مَعَ الطَّوْلِ جَازَ نِكَاحُ الأَمَةِ الْكِتَابِيَةِ بِهٰذَا الأَصْلِ وَعَلٰى هٰذَا مِثَالُه مِمَّا ذَكَرْنَا فِيْمَا سَبَقَ

In a similar manner *(as the two examples mentioned above of 'Adamu Qaa'il bil Fasl' is)* **when we established that a ruling affixed to an adjective** *(when the ruling is mentioned with an adjective describing the one on whom the ruling will apply)* **does not make the ruling conditional on that characteristic** *(it is not incumbent for that characteristic to be present in order for the ruling to apply)***, we said that having the ability to marry a free woman does not prohibit one from marrying a female slave whilst it has been authenticated by the predecessors that Imaam Shaafie has derived his ruling of having the ability to marry a free woman** *(prohibits one from marrying a female slave)* **from this very principle** *(that the ruling has been affixed to an adjective and will thus make the ruling conditional on that characteristic, according to Imaam Shaafie)***. Once we have established the**

permissibility of marrying a Mu'min female slave *(even though one has the ability to marry a free woman)* **on this principle then it is** *(also)* **permissible to marry a female slave from the Ahlul-Kitaab** *(Jews and Christians)* **based on this same principle. And all the examples we have mentioned previously are of the same category.**

The second type of 'Adamu Qaa'il bil Fasl'

وَ نَظِيْرُ الثَّانِيْ اِذَا قُلْنَا أَنَّ الْقَئَ نَاقِضٌ فَيَكُوْنُ الْبَيْعُ الْفَاسِدُ مُفِيْداً لِلْمِلْكِ لِعَدْمِ الْقَائِلِ بِالْفَصْلِ أَوْ يَكُوْنُ مُوْجِبُ الْعَمَدِ الْقَوْدُ لِعَدْمِ الْقَائِلِ بِالْفَصْلِ وَبِمِثْلِ هٰذَا اَلْقَئُ غَيْرُ نَاقِض فَيَكُوْنُ الْمَسُّ نَاقِضًا وَ هٰذَا لَيْسَ بِحُجَّةٍ لِاَنَّ صِحَّةَ الْفَرْعِ وَ اِنْ دَلَّتْ عَلىً صِحَّةِ اَصْلِهِ وَلِكِنَّهَا لاَ تُوْجِبُ صِحَّةَ اَصْلٍ اٰخَرَ حَتّٰى تَفَرَّعَتْ عَلَيْهِ الْمَسْئَلَةُ الاُخْرٰى

An example of the second *(that in which the method of disagreement is different)* **is if we were to say; if vomiting a mouthful breaks Wudhu then an invalid sales transaction will establish ownership or** *(if one were to say)* **vomiting a mouthful breaks Wudhu then the punishment of intentional murder is the death penalty, because of 'Adamu Qaa'il bil Fasl'** *(this will not be a valid Shar'ie proof because even though all the Fuqahaa who say that Wudhu breaks if one vomits a mouthful also say that an invalid sales transaction establishes ownership or that the punishment for intentional murder is the death penalty, because the bases of each of these rulings is different)***.**

Or in a similar manner if one were to say that since vomiting a mouthful does not break Wudhu then touching a woman breaks Wudhu *(because of 'Adamu Qaa'il bil Fasl', that all the Fuqahaa who say that vomiting a mouthful does not break Wudhu say that touching a woman breaks Wudhu)***.**

This *(second type of 'Adamu Qaa'il bil Fasl')* **is not a valid Shar'ie proof because even though a ruling being correct will establish that its principle** *(through which it is derived)* **is correct, it will not establish the accuracy of another principle such that another ruling can be derived from it.**

Duties of the Mujtahid

اَلْوَاجِبُ عَلَى الْمُجْتَهِدِ طَلَبُ حُكْمِ الْحَادِثَةِ مِنْ كِتَابِ اللهِ تَعَالىٰ ثُمَّ مِنْ سُنَّةِ رَسُوْلِ اللهِ بِصَرِيْحِ النَّصِّ أَوْدَلالَتِهِ عَلى مَا مَرَّذِكْرُه فَاِنَّه لاَ سَبِيْلَ اِلَى الْعَمَلِ بِالرَّأْيِ مَعَ اِمْكَانِ الْعَمَلِ بِالنَّصِّ وَلِهَذَا اِذَا اِشْتَبَهَتْ عَلَيْهِ الْقِبْلَةُ فَأَخْبَرَه وَاحِدٌ عَنْهَا لاَ يَجُوْزُ لَهُ التَّحَرِّىْ وَلَوْ وَجَدَ مَاءً فَأَخْبَرَه عَدْلٌ اَنَّه نَجَسٌ لاَ يَجُوْزُ لَهُ التَّوَضِّىْ بِهِ بَلْ يَتَيَمَّمُ

It is Waajib upon the Mujtahid to search for the relevant ruling *(firstly)* **from the Quraan, then** *(secondly)* **from the Hadeeth of Rasulullaah , which must be clear or substantiates the ruling, as we have already discussed** *(in the previous sections of Quraan and Hadeeth)***. The reason for this** *(why the ruling must first be sought from the Quraan and Hadeeth)* **is there is no room for personal opinion when it is possible to act on narration** *(of either Quraan or Hadeeth)***. As a result of this** *(that personal opinion is not permissible when narration is present)* **if one is in doubt as to the direction of Qiblah and a person informs him of the direction of Qiblah then it is not permissible for him to use his own discretion.** *(Similarly)* **If a person finds water and a trustable person informs him that it is impure then it will not be permissible** *(for him to use his own discretion and)* **to make Wudhu from it but should perform Tayammum.**

Discretion is weaker than narration

وَعَلٰى اِعْتِبَارِ أنَّ الْعَمَلَ بِالرَّأْيِ دُوْنَ الْعَمَلَ بِالنَّصِّ قُلْنَا اِنَّ الشّبْهَةَ بِالْمَحَلِّ اَقْوَىٰ مِنَ الشُّبْهَةِ فِى الظَّنِّ حَتّٰى سَقَطَ اِعْتِبَارُ ظَنِّ الْعَبْدِ فِى الْفَصْلِ الأوَّلِ وَمِثَالُه فِيْمَا اِذَا وَطِئَ جَارِيَةَ ابْنِهِ لاَ يُحَدُّ وَاِنْ قَالَ عَلِمْتُ اَنَّهَا حَرَامٌ عَلَيَّ وَ يَثْبُتُ نَسَبُ الْوَلَدِ مِنْهُ لِاَنَّ شُبْهَةَ الْمِلْكِ لَه تَثْبُتُ بِالنَّصِّ فِىْ مَالِ الاِبْنِ قَالَ عَلَيْهِ الصَّلَوٰةُ وَالسَّلاَم '' أنْتَ وَمَالُكَ لِأَبِيْكَ '' فَسَقَطَ اِعْتِبَارُ ظَنِّه فِى الْحِلِّ وَالْحُرْمَةِ فِىْ ذٰلِكَ وَلَوْ وَطِئَ الاِبْنُ جَارِيَةَ اَبِيْهِ يُعْتَبَرُ ظَنُّه فِى الْحِلِّ وَالْحُرْمَةِ حَتّٰى لَوْ قَالَ ظَنَنْتُ اَنَّهَا عَلَيَّ حَرَامٌ يَجِبُ الْحَدُّ وَلَوْ قَالَ ظَنَنْتُ اَنَّهَا عَلَيَّ حَلاَلٌ لاَ يَجِبُ الْحَدُّ لأنَّ شُبْهَةَ الْمِلْكِ فِى مَالِ الأبِ لَمْ يَثْبُتْ لَه بِالنَّصِّ فَاعْتُبِرَ رَأْيُه وَلاَ يَثْبُتُ نَسَبُ الْوَلَدِ وَ اِنِ ادَّعَاهُ

Based upon this that acting on one's own discretion is weaker than narration, we say that a doubt caused by narration *('Shubhah bil Mahal')* **is stronger than a doubt caused by misunderstanding** *('Shubhah fith Than')* **such that the discretion of a person will not be considered in the first instance** *(if there is doubt caused by narration then the doubt will remain despite the discretion of the individual)***. An example of this is when a person has sexual relations with the female slave of his son, whereby he will not be punished** *(the punishment of fornication will not be meted out on him)***, even if he states that he knew that the slave was Haraam upon him, and the lineage of the child born from this union will attributed to him** *(the father of the owner)***. The reason for this is that the doubt of him** *(the father)* **having ownership is established by narration; Rasulullaah said, "You and your wealth belong to your father" thus his discretion of lawfulness and unlawfulness will be not be considered in this** *(as the doubt caused by narration is greater and will remain despite his discretion)***.**

(However) **If the son has sexual relations with the female slave of his father then his discretion of lawfulness and unlawfulness will be considered such that if he says that he thought that she might be Haraam on him** *(but still proceeded to indulge in sexual relations despite this)* **then the punishment** *(for fornication)* **will be Waajib and if he says that he thought she was lawful for him, then the punishment will not be Waajib. The reason for this is that the doubt of having** *(a share of)* **ownership in the wealth of the father is not caused by narration, thus his discretion in the matter will be considered, and the lineage of the child born from this union will not be attributed to him** *(the son)* **even if he claims the child** *(to be his)***.**

When two proofs contradict each other

ثُمَّ اِذَا تَعَارَضَا الدَّلِيْلاَنِ عِنْدَ الْمُجْتَهِدِ فَاِنْ كَانَ التَّعَارُضُ بَيْنَ الرِّوَايَتَيْنِ يَمِيْلُ اِلَى السُّنَّةِ

Then if two proofs contradict each other according to the Mujtahideen; if the *(apparent)* **contradiction is between two verses then one will resort to Hadeeth** *(and the verse which is supported by Hadeeth will be taken)***.**

Contradiction of two Ahaadeeth

وَ اِنْ كَانَ بَيْنَ السُّنَّتَيْنِ يَمِيْلُ اِلٰى آثَارِ الصَّحَابَةِ رَضِىَ اللهُ تَعَالٰى عَنْهُمْ وَ الْقِيَاسِ الصَّحِيْحِ ثُمَّ اِذَا تَعَارَضَ الْقِيَاسَانِ عِنْدَ الْمُجْتَهِدِ يَتَحَرّٰى وَيَعْمَلُ بِأحَدِهِمَا لانَّهُ لَيْسَ دُوْنَ الْقِيَاسِ دَلِيْلٌ شَرْعِىٌّ يُصَارُ اِلَيْهِ

If the contradiction is between two Ahaadeeth *(and one cannot be given preference over the other)* **then the opinions of the Sahabah will be resorted to and thereafter** *(if still a decision cannot be made)* **authentic Qiyaas** *(will be resorted to)*.**Then if two Qiyaas of the Mujtahideen contradict each other one should use his own discretion and practice on one of them** *(of the two Qiyaas)* **as there is no other proof after Qiyaas which one can resort to.**

Practising one one's discretion

وَعَلٰى هٰذَا قُلْنَا اِذَا كَانَ مَعَ الْمُسَافِرِ اِنَاءَانِ طَاهِرٌ وَنَجِسٌ لاَ يَتَحَرّٰى بَيْنَهُمَا بَلْ يَتَيَمَّمُ وَلَوْ كَانَ مَعَه ثَوْبَانِ طَاهِرٌ وَنَجِسٌ يَتَحَرّٰى بَيْنَهُمَا لاِنَّ لِلْمَآءِ بَدَلاً وَ هُوَ التُّرَابُ وَ لَيْسَ لِلثَّوْبِ بَدَلٌ يُصَارُ اِلَيْهِ فَثَبَتَ بِهٰذَا أنَّ الْعَمَلَ بِالرَّأىِ اِنَّمَا يَكُوْنُ عِنْدَ اِنْعِدَامِ دَلِيْلٍ سِوَاهُ شَرْعاً ثُمَّ اِذَا تَحَرّٰى وَتَأكَّدَ تَحَرِّيْهِ بِالْعَمَلِ لاَ يَنْتَقِضُ ذَلِكَ بِمُجَرَّدِ التَّحَرِّىْ وَبَيَانُه فِيْمَا اِذَا تَحَرّٰى بَيْنَ الثَّوْبَيْنِ وَصَلّٰى الظُّهْرَ بِأحَدِهِمَا ثُمَّ وَقَعَ تَحَرِيْهِ عِنْدَ الْعَصْرِ عَلٰى الثَّوْبِ الاخَرِ لاَ يَجُوْزُ أنْ يُّصَلِّىَ الْعَصْرَ بِالاخَرِ لانَّ الأوَّلَ تَأكَّدَ بِالْعَمَلِ فَلاَ يَبْطُلُ بِمُجَرَّدِ التَّحَرِّى وَ هٰذَا بِخِلاَفِ مَا اِذَا تَحَرّٰى فِى الْقِبْلَةِ ثُمَّ تَبَدَّلَ رَأيُه وَوَقَعَ تَحَرِّيْهِ عَلٰى جِهَةٍ اُخْرٰى تَوَجَّهَ اِلَيْهِ لانَّ الْقِبْلَةَ مِمَّا يَحْتَمِلُ الانْتِقَالَ فَأمْكَنَ نَقْلُ الْحُكْمِ بِمَنْزِلَةِ نَسْخِ النَّصِّ وَعَلٰى هٰذَا مَسَائِلُ جَامِعِ الْكَبِيْرِ فِىْ تَكْبِيْرَاتِ الْعِيْدَيْنِ وَتَبَدُّلِ رَأىِ الْعَبْدِ كَمَا عُرِفَ

Based upon this *(that one will practice on one's own discretion when and only there is no other proof to resort to)* **we say that if a traveller has two bottles of water; one containing pure water and one containing impure water, then he will not use his own discretion** *(and make Wudhu with whichever he thinks is pure)* **but will make Tayammum.**

(However) **If a traveller has two sets of clothes; one pure and one impure, then he will use his discretion** *(to determine which is pure and wear that set when performing Salaah)***. The reason for this** *(difference in the ruling of the above two rulings)* **is that water has a substitute one can resort to, which is Tayammum but there is no substitute for the clothing to which he can resort** *(thus he will use his own discretion)***. Thus it is established from this that practising on one's own discretion is only permitted when no other Shar'ie proof is present besides it.**

Then once his own discretion is reinforced by action *(he practices upon the ruling derived from his discretion)* **it will not be invalidated by a mere change in discretion thereafter.**

An explanation of this is when a person uses his discretion to determine which set of clothing is pure and then performs Zuhr Salaah in it then later at the time of Asr his discretion changes to the other set of clothing *(he now feels that the other is pure)***, it will not be permissible for him to perform Asr Salaah in the other set of clothing. The reason for this is that the** *(purity of the)* **first has been reinforced by action** *(he performed Salaah in it)* **and will therefore not be invalidated by** *(a mere change)* **in discretion.**
This *(ruling mentioned above)* **is opposed to when he uses his discretion to ascertain the direction of the Qiblah and his opinion changes to another direction thereafter, whereby he will face towards that** *(the second)* **direction. The reason** *(for this difference in ruling)* **is that the Qiblah is of those things which can change thus it is possible for its ruling to change as well such as its abrogation by the Quraan.**

In the same manner are the laws of the Takbeeraat of Eid, as mentioned in 'Al-Jaami'ul Kabeer', and when the

Section Four

opinion of a person changes, as is commonly known *(if a person begins performing Eid Salaah adhering to the Madhab of Imaam Shaafie, whereby he performs the first Raqaat reciting five additional Takbeer but then his discretion changes in the second Raqaat to the Madhab of Imaam Abu Hanifah such that he will now only recite three additional Takbeer in the second Raqaat)***.**

اَلْبَحْثُ الرَّابِعُ فِى الْقِيَاسِ

فصل: اَلْقِيَاسُ حُجَّةٌ مِنْ حِجَجِ الشَّرْعِ يَجِبُ الْعَمَلُ بِهِ عِنْدَ اِنْعِدَامِ مَافَوْقَه مِنَ الدَّلِيْلِ فِى الْحَادِثَةِ وَقَد وَرَدَ فِىْ ذَلِكَ الأَخْبَارُ وَ الاثَارُ قَالَ عَلَيْهِ الصَّلٰوةُ وَ السَّلاَمُ لِمُعَاذِ بْنِ جَبَلٍ حِيْنَ بَعَثَه اِلَى الْيَمَنِ بِمَ تَقْضِىْ يَا مُعَاذ؟ قَالَ بِكِتَابِ اللهِ تَعَالىٰ قَالَ فاِن لَّمْ تَجِد؟ قَالَ بِسُنَّةِ رَسُوْلِ اللهِ ﷺ قَالَ فَاِن لَّمْ تَجِدْ؟ قَالَ اَجْتَهِدُ بِرَائِي فَصَوَّبَه رَسُوْلُ اللهُ ﷺ فَقَالَ اَلْحَمْدُ لِلهِ الَّذِىْ وَفَّقَ رَسُوْلَ رَسُوْلِ اللهِ عَلىٰ مَا يُحِبُّ وَ يَرْضَاهُ

Qiyaas is a proof from the proofs of Shari'ah, which is Waajib to practise upon when none of the other proofs mentioned above *(Quraan, Sunnat, Ijmaa)* **are present. This** *(that Qiyaas is a valid Shar'ie proof)* **has been reported in Hadeeth and Aathaar** *(narrations of the Sahabah)***. Rasulullaah ﷺ asked Hadhrat Muaadh bin Jabal رضي الله عنه when sending him to Yemen** *(as governor)***, "With what will you pass judgement?" Hadhrat Muaadh رضي الله عنه replied, "By the Quraan." Rasulullaah then asked, "And if you do not find it** *(the answer)* **in the Quraan?" Hadhrat Muaadh replied, "By the Sunnat of Rasulullaah ﷺ." Rasulullaah ﷺ again asked, "And if you do not find it** *(the answer)* **in the Sunnat?" Hadhrat Muaadh رضي الله عنه then replied, "I will then use my discretion." Rasulullaah ﷺ approved of this and said, "All praise belongs to ALLAAH who has inspired the messenger of Rasulullaah ﷺ with that which pleases him and brings him pleasure."**

وَرُوِىَ اَنَّ امْرَأَةً خَثْعَمِيَّةً اَتَتْ اِلىٰ رَسُوْلِ اللهِ ﷺ فَقَالَتْ اِنَّ أَبِىْ كَانَ شَيْخًا كَبِيْرا اَدْرَكَهُ الْحَجُّ وَلاَ يَسْتَمْسِكُ عَلَى الرَّاحِلَةِ فَيُجْزِئُنِىْ أَنْ أَحُجَّ عَنْهُ قَالَ عَلَيْهِ السَّلاَمِ اَرَاَيْتِ لَوْ كَانَ عَلَىٰ أَبِيْكِ دَيْنٌ فَقَضَيْتِهِ اَمَا كَانَ يُجْزِئُكِ فَقَالَتْ بَلىٰ فَقَالَ عَلَيْهِ السَّلاَمُ فَدَيْنُ اللهِ اَحَقُّ وَاَوْلىٰ اَلْحَقَ رَسُوْلُ اللهِ عَلَيْهِ السَّلاَمُ اَلْحَجَّ فِىْ حَقِّ الشَّيْخِ اَلْفَانِىْ بِالْحُقُوْقِ الْمَالِيَةِ وَاَشَارَ اِلىٰ عِلَّةٍ مُؤَثِّرَةٍ فِى الْجَوَازِ وَ هِىَ الْقَضَاءُ وَ هٰذَا هُوَ الْقِيَاسُ

It has been reported that a woman from the tribe of Banu Khath'am came to Rasulullaah and asked, "My father is an elderly man, upon whom Hajj has become Fardh but he is incapable of riding *(he is so aged that he is incapable of even mounting the conveyance)***, will it suffice for me to perform Hajj on his behalf?" Rasulullaah replied, "If your father was in debt and you paid it on his behalf, would this suffice?" when she replied in the affirmative Rasulullaah said, "The debt of ALLAAH** *(i.e. Hajj)* **is more deserving and better** *(to be paid)***."** *(In this Hadeeth)* **Rasulullaah associated** *(compared)* **Hajj of the incapable to monetary rights** *(that just as it is permissible for another to fulfil your monetary rights on our behalf so too can another perform Hajj o your behalf)* **and pointed out the Illat** *(principle cause)* **which makes it permissible and that** *(illat was)* **Qadhaa** *(payment or fulfilment)***.** *(In essence)* **This is Qiyaas** *(to derive a ruling by comparing it to another ruling using a common feature between them)***.**

وَ رَوٰى اِبْنُ الصَّبَاغِ وَ هُوَ مِنْ سَادَاتِ اَصْحَابِ الشّٰفِعِىِّ فِىْ كِتَابِهِ الْمُسَمَّىٰ بِالشَّامِلِ عَنْ قَيْسِ بْنِ طَلْقِ بْنِ عَلِىٍّ أَنَّهُ قَالَ جَاءَ رَجُلٌ اِلىٰ رَسُوْلِ اللهِ كَاَنَّه بَدْوِىٌّ فَقَالَ يَا نَبِىَّ اللهِ مَا تَرَىٰ فِىْ مَسِّ الرَّجُلِ ذَكَرَهُ بَعْدَ مَا تَوَضَّأَ فَقَالَ هَلْ هُوَ اِلاَّ بِضْعَةٌ مِنْهُ وَ هٰذَا هُوَ الْقِيَاسُ وَ سُئِلَ ابْنُ مَسْعُوْدٍ عَمَّنْ تَزَوَّجَ اِ مْرَأَةً وَلَمْ يُسَمَّ لَهَا مَهْرًا وَ قَدْ مَاتَ عَنْهَا زَوْجُهَا قَبْلَ الدُّخُوْلِ فَاسْتَمْهَلَ شَهْرًا ثُمَّ قَالَ اَجْتَهِدُ فِيْهِ بِرَأْيِىْ فَاِنْ كَانَ صَوَابًا فَمِنَ اللهِ وَ اِنْ كَانَ خَطَاءً فَمِنْ اِبْنِ اُمِّ عَبْدٍ فَقَالَ اُرَىٰ لَهَا مَهْرَ مِثْل نِسَائِهَا لاَ وَكَسَ فِيْهَا وَلاَ شَطَطَ

Ibnus Sabbaagh has narrated, who is amongst the esteemed students of Imaam Shaafie , in his book entitled 'Ash-Shaamil' from Qais bin Thalaq bin Ali that a person, who seemed to be a Bedouin, came to Rasulullaah and asked, "O Rasulullaah ! What is the ruling if a person touches his private part after having performed Wudhu?" Rasulullaah

 replied, "Is it not but a limb of the body *(thus Wudhu will not break by touching it just as wudhu does not break by touching other limbs of the body)***."** *(In essence)* **This is Qiyaas.**

Hadhrat Ibn Mas'ood was asked about a man who married a woman but did not stipulate her Mehr and the husband then passed away before the marriage could be consummated, on which Hadhrat Ibn Mas'ood requested some time *(to research the answer)***saying, "I will deliberate over the ruling, if my verdict is correct then it is from ALLAAH and if it is incorrect then it is from myself** *(it is due to my own inability)***" Thereafter** *(after some time had passed)* **he replied, "I am of the opinion that she will receive Mehr Mithal of her fellow womenfolk** *(the Mehr commonly given to women in that town)***, no less and no more."**

Conditions for the validity of Qiyaas

فَصْلٌ

شُرُوْطُ صِحَّةِ القِيَاسِ خَمْسَةٌ اَحَدُهَا اَنْ لَا يَكُوْنَ فِىْ مُقَابَلَةِ النَّصِّ وَ الثَّانِىْ اَنْ لاَ يَتَضَمَّنَ تَغْيِيْرَ حُكْمٍ مِنْ اَحْكَامِ النَّصِّ وَ الثَّالِثُ أَنْ لاَ يَكُوْنَ المُعَدّٰى حُكْمًا لاَ يُعْقَلُ مَعْنَاهُ وَ الرَّابِعُ اَنْ يَّقَعَ التَّعْلِيْلُ لِحُكْمٍ شَرْعِىٍّ لاَ لِاَمْرٍ لُغْوِىٍّ وَ الْخَامِسُ اَنْ لَا يَكُوْنَ الْفَرْعُ مَنْصُوْصًا عَلَيْهِ

There are five conditions for the validity of Qiyaas;

1) Qiyaas must not contradict Nas *(the Quraan and Hadeeth)***.**

2) Qiyaas must not alter any ruling already established by Nas.

3) The Qiyaas must not be based on a ruling contrary to reason *(the ruling which one is using to derive a verdict from must not be contrary to reason, i.e. Khilaaf Qiyaas)***.**

4) The method in which the Illat *(principle cause of the ruling)* **is identified is in accordance with the principles of Shari'ah and not based upon diction** *(the Illat must not be ascertained by analysing the literal meaning of a word)***.**

5) The Qiyaas must not seek a ruling for that which is mentioned in Nas.

Example of Qiyaas contradicting Nas

وَ مِثَالُ الْقِيَاسِ فِىْ مُقَابَلَةِ النَّصِّ فِيْمَا حُكِىَ اَنَّ الْحَسَنَ بْنَ زِيَادٍ سُئِلَ عَنِ الْقَهْقَهْةِ فِى الصَّلٰوةِ فَقَالَ اِنْتَقَضَت الطَّهَارَةُ بِهَا قَالَ السَّائِلُ لَوْ قَذَفَ مُحْصَنَةً فِى الصَّلَوٰةِ لاَ يَنْتَقِضُ بِهِ الْوُضُوُ مَعَ اَنَّ قَذْفَ الْمُحْصِنَةَ اَعْظَمُ جِنَايَةً فَكَيْفَ يَنْتَقِضُ بِالْقَهْقَهَةِ وَ هِىَ دُوْنَه فَهٰذَا قِيَاسٌ فِىْ مُقَابَلَةِ النَّصِّ وَ هُوَ حَدِيْثُ الاِعْرَابِىِّ الَّذِىْ فِىْ عَيْنِهِ سُوْءٌ وَكَذٰلِكَ اِذَا قُلْنَا جَازَ حَجُّ الْمَرْأةِ مَعَ الْمَحْرَمِ فَيَجُوْزُ مَعَ الأمِيْنَاتِ كَانَ هٰذَا قِيَاسًا بِمُقَابَلَةِ النَّصِّ وَ هُوَ قَوْلُه عَلَيْهِ السَّلاَمُ لاَ يَحِلُّ لامْرَاَةٍ تُؤْمِنُ بِاللهِ وَالْيَوْمِ الآخِرِ أَنْ تُسَافِرَ فَوْقَ ثَلٰثَةَ أيَّامٍ وَلَيَالِيْهَا اِلاَّ وَمَعَهَا أبُوْهَا أوْ زَوْجُهَا أوْ ذُوْ رَحِمٍ مَحْرَمٍ مِنْهَا

An example of the first, that is Qiyaas contradicting Nas *(and will therefore be invalid),* **is what has been reported that Hasan bin Ziyaad was asked about laughing** *(loud)* **in Salaah to which he replied that it breaks Wudhu. The person then asked, "If a person falsely accuses a chaste woman of fornication while in Salaah then his Wudhu will not break even though false accusation is a greater crime**

(than laughing aloud in Salaah), **so how is it possible that Wudhu breaks by laughing aloud in Salaah when it is lesser." This is an example of Qiyaas contradicting Nas; that is** *(it contradicts)* **the Hadeeth of the Bedouin who had an ailment in his eyes** *(and fell into a hole which he did not see, causing some of the Sahabah to laugh in their Salaah and after which Rasulullaah said "Whomsoever amongst you laughed loudly (while in Salaah) should repeat his Wudhu and Salaah as well.")*

Similarly*(Qiyaas will be invalid)* **if we were to say that since a woman can perform Hajj when accompanied by her Mahram** *(blood relative)***it is permissible for her to perform Hajj when accompanied by a group of trustable women, it would be Qiyaas in contradiction to Nas; and that is the Hadeeth of Rasulullaah , "It is not permissible for a woman to travel** *(to a distance)* **further than three days and nights except if accompanied by her father , husband, or Mahram** *(blood relative)***."**

Example of Qiyaas altering a ruling established by Nas

وَ مِثَالُ الثَّانِىْ وَ هُوَ مَا يَتَضَمَّنُ تَغْيِيْرَ حُكْمٍ مِنْ اَحْكَامِ النَّصِّ مَا يُقَالُ النِّيَّةُ شَرْطٌ فِى الْوُضُوْءِ بِالْقِيَاسِ عَلَى التَّيَمُّمِ فَاِنَّ هٰذَا يُوْجِبُ تَغْيِيْرَ اٰيَةِ الْوُضُوْءِ مِنَ الاطْلاَقِ اِلَى التَّقْيِيْدِ وَكَذٰلِكَ اِذَا قُلْنَا اَلطَّوَافُ بِالْبَيْتِ صَلٰوةٌ بِالْخَبَرِ فَيَشْتَرِطُ لَهُ الطَّهَارَةُ وَسَتْرُ الْعَوْرَةِ كَالصَّلٰوةِ كَانَ هٰذَا قِيَاساً يُوْجِبُ تَغْيِيْرَ نَصِّ الطَّوَافِ مِنَ الاِطْلاَقِ اِلَى الْقَيْدِ

An example of the second, that is Qiyaas altering the ruling established by Nas*(and will therefore be invalid)* **is what has been said** *(by Imaam Shaafie)* **that intention is a condition for** *(the validity of)* **Wudhu by making Qiyaas on Tayammum** *(wherein intention is a condition for its validity)*

because this *(qiyaas)* **will alter the verse of Wudhu from being Mutlaq***(having no restrictive clauses)* **to Muqayyad** *(which is impermissible as has been discussed under the section of Mutlaq in the Quraan)***.**

Similarly *(Qiyaas will be invalid)* **if we were to say that Tawaaf of the Ka'abah is Salaah because of what has been stated in Hadeeth** *("Tawaaf is Salaah except that ALLAAH Ta'ala has made talking permissible in Tawaaf")* **and therefore Tahaarat** *(Wudhu)* **and concealing the Aurah** *(private area which must be concealed)* **is compulsory in Tawaaf, just as** *(it is compulsory)* **in Salaah, it will result in altering the Nas of Tawaaf from being Mutlaq to Muqayyad.**

Example of Qiyaas based on a ruling contrary to reason

وَمِثَالُ الثَّالِثِ هُوَ مَا لاَ يُعْقَلُ مَعْنَاهُ فِيْ حَقِّ جَوَازِ التَّوضِّيْ بِنَبِيْذِ التَّمَرِ فَاِنَّه لَوْ قَالَ جَازَ بِغَيْرِهِ مِنَ الأنْبِذَةِ بالْقِيَاسِ علىٰ نَبِيْذِ التَّمَراَوْ قَالَ لَوْ شَجَّ فِيْ صَلوٰتِه أوْ اِحْتَلَمَ يَبنِى عَلىٰ صَلَوٰتِهِ بِالْقِيَاسِ عَلىٰ مَا اِذًا سَبَقَهُ الْحَدَثُ لاَ يَصِحُّ لانَّ الْحُكْمَ فِى الأصْلِ لَمْ يُعْقَلْ مَعْنَاهُ فَاسْتَحَالَ تَعْدِيَتُه اِلَى الْفَرْعِ وَ بِمِثْلِ هٰذَا قَالَ اَصْحَابُ الشَّافِعِيِّ قُلَّتَانِ نَجِستَانِ اِذَا اِجْتَمَعَتَا صَارَتَا طَاهِرَتَيْنِ فَاِذَا افْتَرَقَتَا بَقِيَتَا عَلٰى الطَّهَارَةِ بِالْقِيَاسِ عَلىٰ مَا اِذَا وَقَعَتِ النَّجَاسَةُ فِى الْقُلَّتَيْنِ لانَّ الْحُكْمَ لَوْ ثَبَتَ فِى الأَصْلِ كَانَ غَيْرُ مَعْقُوْلٍ مَعْنَاهُ

An example of the third, that is Qiyaas based on a ruling contrary to reason *(and will therefore be invalid)* **is with regards to the permissibility of performing Wudhu with date juice** *(water sweetened by leaving dates to soak in it)* **in the sense that if a person were to say that Wudhu is permissible with other juices as well by making Qiyaas on date juice** *(when permissibility of performing Wudhu with date juice is established contrary to reason)***.**

Or*(Qiyaas will be invalid)* **if a person were to say that if a person is inflicted with a head injury or has a wet-dream in Salaah then he may continue with his Salaah** *(from the point that his Wudhu broke after attaining purity)* **by making Qiyaas on that person whose Wudhu broke while in Salaah** *(whereby he will perform Wudhu and continue with his Salaah from the point that his Wudhu broke)***, this Qiyaas will be incorrect because the ruling of the original law** *(on which the derived ruling is based)* **is contrary to reason** *(Khilaaf Qiyaas)* **and it is therefore impossible to apply the same ruling** *(of the that which is Khilaaf Qiyaas)***to that for which a ruling is being sought.**

In a similar manner*(Qiyaas will be invalid)* **the students of Imaam Shaafie have said if two impure jars of water are collected together** *(in one jar)* **then they become pure and if separated thereafter** *(into two separate jars)* **will still remain pure by making Qiyaas on the Hadeeth of impurity falling into that amount of water which can fill two jars** *(such that it will not become pure)***,** *(this Qiyaas is incorrect)* **because even if it** *(purity)* **is established in the original** *(from the Hadeeth in that amount of water that fills two jars)* **it is contrary to reason** *(Khilaaf Qiyaas and another ruling cannot be derived from it)***.**

Example of Qiyaas whereby the Illat was identified by diction

وَ مِثَالُ الرَّابِعِ وَ هُوَ مَا يَكُوْنُ التَّعْلِيْلُ لأَمْرٍ شَرْعِيٍ لاَ لاَمْرٍ لُغَوِيٍّ فِىْ قَوْلِهِمْ اَلْمَطْبُوْخُ الْمُنَصَّفُ خَمْرٌ لِاَنَّ الْخَمْرَ اِنَّمَا كَانَ خَمْراً لَانَّه يُخَامِرُ الْعَقْلَ أَيْضًا فَيَكُوْنُ خَمْرًا بِالْقِيَاسِ وَالسَّارِقُ اِنَّمَا كَانَ سَارِقًا لانَّه اَخَذَ مَالَ الْغَيْرِ بِطَرِيْقِ الْخُفْيَةِ وَ قَدْ شَارَكَهُ النَّبَّاشُ فِىْ هٰذَا الْمَعْنى فَيَكُوْنُ سَارِقًا بِالْقِيَاسِ وَ هٰذَا قِيَاسٌ فِى اللُّغَةِ مَعَ اِعْتِرَافِهِ اَنَّ الاِسْمَ لَمْ يُوْضَعْ لَه فِى اللُّغَةِ

وَالدَّلِيْلُ عَلىٰ فَسَادِ هٰذَا النَّوْعِ مِنَ الْقِيَاسِ أَنَّ الْعَرَبَ يُسَمِّى الْفَرَسَ اَدْهَمَ لِسَوَادِهِ وَ كُمَّيْتًا لِحُمْرَتِهِ ثُمَّ لاَ يُطْلَقُ هٰذَا الاِسْمُ عَلٰى الزَّنْجِيِّ وَ الثَّوْبِ الأَحْمَرِ وَ لَوْ جَرَتِ المُقَايَسَةُ فِى الأَسَامِى اللُّغَوِيَّةِ لَجَازَ ذٰلِكَ لِوُجُوْدِ الْعِلَّةِ وَ لِاَنَّ هٰذَا يُؤَدِّىْ اِلٰى اِبْطَالِ الْاَسْبَابِ الشَّرعِيَّةِ وَذَلِكَ لِاَنَّ الشَّرْعَ جَعَلَ السَّرَقَةَ سَبَبًا لِنَوْعٍ مِنَ الْاَحْكَامِ فَاِذَا عَلَّقْنَا الْحُكْمَ بِمَا هُوَ أَعَمُّ مِنَ السَّرِقَةِ وَ هُوَ اَخْذُ مَالِ الْغَيْرِ عَلٰى طَرِيْقِ الخُفْيَةِ تَبَيَّنَ أَنَّ السَّبَبَ كَانَ فِى الأَصْلِ مَعْنًى هُوَ غَيْرُ السَّرِقَةِ وَكَذَلِكَ جَعَلَ شُرْبِ الْخَمَرِ سَبَبًا لِنَوْعٍ مِنَ الأَحْكَامِ فَاِذَا عَلَّقْنَا الْحُكْمَ بِأَمْرٍ اَعَمُّ مِنَ الْخَمْرِ تَبَيَّنَ أَنَّ السَّبَبَ كَانً فِى الأَصْلِ مَعْنًى هُوَ غَيْرُ السَّرِقَةً وَكَذَلِكَ جَعَلُ شُرْبِ الْخَمْرِ سَبَباً لِنَوْعٍ مِنَ الأَحْكَامِ فَاِذَا عَلَّقْنَا الْحُكْمَ بِأَمْرِ أَعَمُّ مِنَ الْخَمْرِتَبَيَّنَ أَنَّ الْحُكْمَ كَانً فِى الأَصْلِ مُتَعَلِّقًا بِغَيْرِالْخَمْرِ

An example of the fourth, that is Qiyaas wherein the Illat *(principle cause of the ruling)* **was indentified using diction** *(and will therefore be invalid)* **is the ruling of Imaam Shaafie and his students that grape juice which has been cooked until half has evaporated** *(thus becoming intoxicating)* **is Khabar** *(and the same laws relating to Khamar will apply to other intoxicating substances as well)***. The reason for this is that Khamar is called Khamar because it intoxicates and other substances intoxicate as well thus they too will be regarded as Khamar** *(because of them both having the same Illat of being intoxicating, which was derived from the dictionary meaning of Khamar)***.**

*(Similarly)***A thief** *(Saariq)* **is called Saariq because he steals the wealth of others secretly** *(without being seen)* **and a grave robber also shares this meaning** *(he also steals the Shrouds, etc from the deceased secretly without being seen)***, thus a grave robber will also be regarded as a Saariq by Qiyaas** *(on the dictionary meaning of Saariq, thus the same laws which apply to a Saariq will apply to a grave robber)***.**

This is making Qiyaas on the dictionary meaning *(of words)* **even though he** *(Imaam Shaafie)* **admits that the word was not intended for that meaning** *(the word Khamar and Saariq was not intended to refer to all intoxicants nor grave robbers)***.**

The proof that this form of Qiyaas is invalid is that the Arabs refer to a horse as "Adham" because of it being black and "Kumayt" because of it being red but these words are not used when referring to a African person or red clothes *(despite them having the same Illat)***. Thus if Qiyaas of dictionary meanings was permitted then it would be permissible** *(to call an African person "Adham" and red clothes "Kumayt")* **because of them having the same Illat.**

(Another reason why this form of Qiyaas is impermissible is) **Because this leads to nullifying the Sabab of Shari'ah** *(it nullifies the method in which the Shari'ah derives the ruling)***. This is** *(it nullifies the Sabab of Shari'ah)* **because the Shari'ah has made Theft** *(Saraqah)* **a Sabab for certain rulings to apply** *(the hand of the thief to be cut)* **and if we were to affix the ruling to that which is more broader in meaning than theft** *(Saraqah)***, that is stealing the wealth of others secretly, then this will mean that the Sabab for the ruling** *(that the hand be cut off)***in the first instance was something other than theft** *(Saraqah, which was explicitly mentioned by Shari'ah)***.**

Similarly Shari'ah has made drinking Khamar a Sabab for certain laws to apply *(for the perpetrator to be given eighty lashes)* **and if we were to affix the ruling to that which is broader in meaning than drinking Khamar** *(that is becoming intoxicated)* **then it would mean that the Sabab for the ruling in the first instance was something other than Khamar** *(and in both instances in will result in a person changing the ruling of Shari'ah, which is impermissible)***.**

Example of Qiyaas wherein the ruling is being sought for something mentioned in Nas

وَمِثَالُ الشَّرْطِ الخَامِسِ وَ هُوَ مَا لاَ يَكُوْنُ الْفَرْعُ مَنْصُوْصًا عَلَيْهِ كَمَا يُقَالُ اِعْتَاقُ الرَّقَبَةِ الْكَافِرَةِ فِىْ كَفَّارَةِ الْيَمِيْنِ وَالظِّهَارِ وَ لاَ يَجُوْزُ بِالْقِيَاسِ عَلٰى كَفَّارَةِ الْقَتْلِ وَ لَوْ جَامَعَ الْمُظَاهِرُ فِىْ خِلاَلِ الاِطْعَامِ يَسْتَأْنِفُ الاِطْعَامَ بِالْقِيَاسِ عَلَى الصَّوْمِ

An example of the fifth, that is Qiyaas wherein the ruling is being sought for something mentioned in Nas *(and will therefore be invalid)* **is saying that setting a Kaafir slave free in the Kaffaarah** *(compensation)* **of** *(breaking an)* **oath and Thihaar** *(comparing one's wife to a blood relative)* **is not permissible by making Qiyaas on the compensation for murder** *(wherein only a Muslim slave can be set free)***.**

(Another example where the Qiyaas will be invalid is) **If a person has sexual relations with his Mathaahir** *(wife whom he compared to a blood relative)* **while feeding** *(the sixty poor people as Kaffaarah)* **then saying he must repeat the feeding by making Qiyaas on fasting** *(whereby if he has sexual relations with his wife during the period of fasting two months as Kaffaarah then he has to repeat it)***.**

وَ يَجُوْزُ لِلْمُحْصَرِ أنْ يَتَحَلَّلَ بِالصَّوْمِ بِالْقِيَاسِ عَلَى المُتَمَتِّعِ وَالْمُتَمَتِّعُ اِذَا لَمْ يَصُمْ فِىْ أيَّامِ التَّشْرِيْقِ يَصُوْمُ بَعْدَ ہَا بِالْقِيَاسِ عَلٰى قَضَاءِ رَمَضَانَ

(The third example of Qiyaas wherein the ruling is being sought for something mentioned in Nas is saying that) **It is permissible for one prevented from performing Hajj**[1] *(after already donning the Ihraam)* **to become Halaal** *(be free from*

[1] The ruling stipulated in the Quraan is that if one has been prevented from performing Hajj after already having donned the Ihraam, then he should have a sacrifice carried out on his behalf in the boundaries of the Haram and only thereafter will be free from Ihraam.

Ihraam) **by fasting** *(instead of ordering a sacrifice to be made in the boundaries of the Haram)* **by making Qiyaas on one performing Hajj Tamattu** *(who can fast three days before Hajj and seven after if he cannot afford the Waajib sacrifice of Hajj Tamattu)*. *(This Qiyaas is invalid as the verse of the Quraan is explicit in stating that the only manner in which one can become free from Ihraam is by having a sacrifice made on his behalf in the boundaries of the Haram and permitting this we will be changing the ruling of the Quraan.)*

And *(another example of Qiyaas wherein the ruling is being sought for something mentioned in Nas is saying that)* **if a person performing Hajj Tamattu** *(and could not afford the Waajib sacrifice of Hajj Tamattu, resulting in him having to fast for three days prior to Hajj seven after Hajj)* **does not fast** *(for three days)* **before Hajj then he may fast after Hajj** *(keep the three missed fasts in addition to the seven all after Hajj)* **by making Qiyaas on the missed fasts of Ramadaan** *(that in the same manner as the missed fasts of Ramadaan may be kept at a later date so too can these missed fasts of Hajj be kept later)*. *(This Qiyaas is invalid as the verse of the Quraan is explicit in stating that if one cannot afford the sacrifice then he must fast for three days before Hajj and seven after and in permitting this we will be changing the ruling of the Quraan.)*

Definition of Qiyaas

فصل

اَلْقِيَاسُ الشَّرْعِيُّ هُوَ تَرَتُّبُ الْحُكْمِ فِىْ غَيْرِ الْمَنْصُوْصِ عَلَيْهِ عَلىٰ مَعْنًى هُوَ عِلَّةٌ لِذَٰلِكَ الْحُكْمِ فِى الْمَنْصُوْصِ عَلَيْهِ

Qiyaas in Shari'ah is to establish the ruling in that not mentioned in Nas*(in what has not been defined)* **based on a characteristic** *(found in it)***, which is an Illat for the ruling in**

that mentioned in Nas*(they both have a common Illat because of which the same ruing can be passed)***.**

Ascertaining the Illat

ثُمَّ اِنَّمَا يُعْرَفُ كَوْنُ الْمَعْنَى عِلَّةً بِالْكِتَابِ وَ بِالسُّنَّةِ وَ بِالاِجْمَاعِ وَ بِالاِجْتِهَادِ وَ الاِسْتِنْبَاطِ فَمِثَالُ الْعِلَّةِ الْمَعْلُوْمَةِ بِالْكِتَابِ كَثْرَةُ الطَّوَافِ فَاِنَّهَا جُعِلَتْ عِلَّةً لِسُقُوْطِ الْحَرَجِ فِى الاِسْتِيْذَانِ فِىْ قَوْلِهِ تَعَالىٰ {لَيْسَ عَلَيْكُمْ وَلاَ عَلَيْهِمْ جُنَاحٌ بَعْدَهُنَّ طَوَّافُوْنَ عَلَيْكُمْ بَعْضُكُمْ عَلٰى بَعْضٍ} ثُمَّ اَسْقَطَ رَسُوْلُ اللهِ حَرَجَ نَجَاسَةِ سُؤْرِ الْهِرَّةِ بِحُكْمِ هٰذِهِ الْعِلَّةِ فَقَالَ عَلَيْهِ السَّلاَمُ اَلْهِرَّةُ لَيْسَتْ بِنَجَسَةٍ فَاِنَّهَا مِنَ الطَّوَّافِيْنَ عَلَيْكُمْ وَالطَّوَّافَاتِ فَقَاسَ اَصْحَابُنَا جَمِيْعَ مَا يَسْكُنُ فِى الْبُيُوْتِ كَالْفَارَةِ وَالْحَيَّةِ عَلَى الْهِرَّةِ بِعِلَّةِ الطَّوَافِ

The characteristic being the Illat *(principle cause of the ruling)* **is ascertained through the Quraan, Sunnat, Ijmaa, deliberation and derivation.**

An example of an Illat ascertained from the Quraan is constant coming and going *('Kathratut Tawaaf')***, as Shari'ah has made this an Illat for removing the difficulty of having to repeatedly seek permission to enter, as mentioned in the verse,**

"There is no sin on yourselves or on them *(for not asking permission because)* **<u>they often come and go</u> from your presence, one from the other."** *(Surah Noor: 58)*

And Rasulullaah then later removed the difficulty of impurity being caused by the saliva of cats based on this same Illat *(Rasulullaah ruled that the saliva of cats is not impure because cats often come and go in the home)* **and said, "Cats are not impure as they often come and go amongst you** *(they often come in and out of the house)***". Thus our scholars** *(of the Hanafi Madhab)* **made Qiyaas** *(based on this*

Illat) **on all those creatures that reside in the home, such as rats and snakes, based on this same Illat** *(that since they too often go in and out of the house, there saliva is also not impure)***.**

وَكَذٰلِكَ قَوْلُهُ تَعَالىٰ {يُرِيْدُ اللهُ بِكُمُ الْيُسْرَ وَلاَ يُرِيْدُ بِكُمُ الْعُسْرَ } بَيَّنَ الشَّرْعُ أنَّ الاِفْطَارَ لِلْمَرِيْضِ وَالْمُسَافِرِ لِتَيْسِيْرِ الأَمْرِ عَلَيْهِمْ لِيَتَمَكَّنُوْا مِنْ تَحْقِيْقِ مَا يَتَرَجَّح فِىْ نَظْرِهِمْ مِنَ الاتْيَانِ بِوَظِيْفَةِ الْوَقْتِ اَوْ تَأْخِيْرِهِ اِلٰى أيَّامٍ اُخَرَ وَبِاِعْتِبَارِ هٰذَا الْمَعْنٰى قَالَ أبُوْحَنِيْفَةَ اَلْمُسَافِرُ اِذَا نَوٰى فِى أيَّامِ رَمَضَانَ وَاجِباً اٰخَرَ يَقَعُ عَنْ وَاجِبٍ اٰخَرَ لانَّه لَمَّا ثَبَتَ لَهُ التَّرَخُّصُ بِمَا يَرْجِعُ اِلىٰ مَصَالِحِ بَدَنِهِ وَ هُوَ الافْطَارُ فَلانْ يَثْبُتَ لَه ذَلِكَ بِمَا يَرْجِعُ اِلىٰ مَصَالِحَ بَدَنِهِ وَ هُوَ الْاِفْطَارُ فَلاَن يَّثْبُتَ لَه ذٰلِكَ بِمَا يَرْجِعُ اِلٰى مَصَالِحِ دِيْنِه وَهُوَ اِخْرَاجُ النَّفْسِ عَن عُهْدَةِ الْوَاجِبِ اَوْلٰى

Similarly in the verse,

"ALLAAH desires ease for you *(by allowing travellers and the ill to fast at a later time)* **and does not desire hardship for you".** *(Surah Baqarah: 185)*

The Shari'ah explains that granting permission to the ill and the travellers to fast at a later time is to make ease for them by allowing them to adopt that which is easier for them to carry out, by either fasting in that time or delaying the fast to a later time*(when it is easier for them to fast)***.**

Considering this meaning *(that fasting is not incumbent on the Musaafir and the ill i order to make ease for them)* **Imaam Abu Hanifah □ says that if a Musaafir makes the intention for another Waajib fast** *(such as Qadhaa fast, or for a vow)* **in the month of Ramadaan then the fast will be for that other Waajib fast** *(and not the fast of Ramadaan)***. The reason for this is that when permission to adopt that which is beneficial for his body has been established** *(that is not to fast)* **then it would most certainly establish permission to**

adopt that which is beneficial for his Deen, and that is clearing that which is Waajib upon him from his obligation.

Illat ascertained from the Sunnat

وَ مِثَالُه اَلْعِلَّةُ الْمَعْلُوْلَةُ بِالسُّنَّةِ فِيْ قَوْلِه عَلَيْهِ الصَّلٰوةُ وَالسَّلاَمِ لَيْسَ الْوُضُوْءُ عَلٰى مَنْ نَامَ قَائِمًا اَوْ قَاعِدًا اَوْ رَاكِعًا اَوْ سَاجِدًا اِنَّمَا الْوُضُوْءُ عَلٰى مَنْ نَامَ مُضْطَجِعًا فَاِنَّه اِذَا نَامَ مُضْطَجِعًا اِسْتَرَخَتْ مَفَاصِلُه جُعِلَ اِسْتِرْخَاءُ الْمَفَاصِيْلِ عِلَّتُه فَيَتَعَدَّى الْحُكْمُ بِهٰذِهِ الْعِلَّةِ اِلٰى النَّوْمِ مُسْتَنِدًا اَوْ مُتَّكِئًا اِلىٰ شَيْئٍ لَوْ اُزِيْلَ عَنْهُ لَسَقَطَ وَكَذٰلِكَ يَتَعَدَّى الْحُكْمَ بِهٰذِهِ الْعِلَّةِ اِلٰى الْاَغْمَاءِ وَالسُّكْرِ

An example of an Illat ascertained from Sunnat is in the Hadeeth of Rasulullaah ﷺ, "Wudhu is not incumbent upon one who sleeps standing, sitting, in Ruku or in Sajdah *(wudhu will not breaks in these instances)***.** *(However)* **Wudhu is incumbent upon one who sleeps lying down because when he sleeps lying down his limbs slack** *(he does not have control of his limbs and is most likely to pass wind without realising)***" In this Hadeeth the limbs slacking was made Illat** *(for Wudhu breaking)***, thus the same ruling** *(of Wudhu breaking)* **will apply when this Illat is found while sleeping leaning against something, such that if the item** *(on which he is leaning)* **is removed he will fall. Similarly, the same ruling** *(of Wudhu breaking)* **will apply when this Illat is found when a person falls unconscious or is drunk.**

وَكَذٰلِكَ قَوْلُه عَلَيْهِ السَّلاَمِ تَوَضَّئِيْ وَ صَلِّيْ وَ اِنْ قَطَرَ الدَّمُ عَلَى الْحَصِيْرِ قَطْرًا فَاِنَّه دَمُ عِرْقٍ الْفَجَرَ جَعَلَ اِنْفِجَارُ الدَّمِ عِلَّةً فَتَعَدَّى الْحُكْمَ بِهٰذِهِ الْعِلَّةِ اِلَى الْفَصْدِ وَ الْحَجَامَةِ

In a similar manner *(the illat has been ascertained from Sunnat)* **in the Hadeeth, "Make Wudhu and perform Salaah, even if the blood continues to drip onto the mat,**

because this is blood flowing from the veins *(and is not Haidh but Istihaadhah)***." The Illat** *(for Wudhu breaking)* **was flowing blood, thus the same ruling** *(of Wudhu breaking)* **will apply to one who bleeds or has cupping done on him.**

Illat ascertained by Ijmaa

وَمِثَالُ الْعِلَّةِ الْمَعْلُوْمَةِ بِالاجْمَاعِ فِيْمَا قُلْنَا اَلصِّغْرُ عِلَّةٌ لِوِلايَةِ الأَبِ فِىْ حَقِّ الصَّغِيْرِ فَيَثْبُتُ الْحُكْمُ فِىْ حَقِّ الصَّغِيْرَةِ لِوُجُوْدِ الْعِلَّةِ وَالْبُلُوْغُ عَنْ عَقْلٍ عِلَّةٌ لِزَوَالِ وِلاَيَةِ الأَبِ فِىْ حَقِّ الْغُلاَمِ فَيَتَعَدَّى الْحُكْمُ اِلَى الْجَارِيَةِ بِهٰذِهِ الْعِلَّةِ وَانْفِجَارُ الدَّمِ عِلَّةٌ لانْتِقَاضِ الطَّهَارَةِ فِىْ حَقِّ الْمُسْتَحَاضَةِ فَيَتَعَدَّى الْحُكْمُ اِلىٰ غَيْرِهَا لِوُجُوْدِ الْعِلَّةِ

An example of Illat ascertained from Ijmaa is what we have said that not attaining puberty is an Illat for the father having the right of decision over his immature son, thus the same ruling *(which is established for the immature son)* **will apply to the immature daughter as well because of the same Illat being found.** *(Thereafter)* **Attaining puberty, with sanity is Illat for the relinquishment of the right of decision for the father in favour of his immature son thus the same ruling will apply to his immature daughter as well** *(that when she attains puberty and is sane, the father will no longer have the right of decision over her)***.**

(Similarly) **The flowing of blood is the Illat for Wudhu breaking with regards to a Mustahaadhah** *(a woman who bleeds more than the maximum number of days of Haidh)***, thus the same ruling will apply to others besides her when the same Illat is found.**

Two types of Qiyaas

ثُمَّ بَعْدَ ذٰلِكَ نَقُوْلُ اَلْقِيَاسُ عَلىٰ نَوْعَيْنِ اَحَدُهُمَا أنْ يَّكُوْنُ الْحُكْمُ الْمُعَدّٰى مِنْ نَوْعِ الْحُكْمِ الثَّابِتِ فِى الأصْلِ وَالثَّانِىْ أنْ يَّكُوْنَ مِنْ جِنْسِهِ مِثَالُ الاتِّحَادِ فِى النَّوْعِ مَا قُلْنَا اِنَّ الصِّغْرَ عِلَّةٌ لِوِلاَيَةِ النِّكَاحِ فِىْ حَقِّ الْغُلاَمِ فَيَثْبُتُ وِلاَيَةُ الإنْكَاحِ فِىْ حَقِّ الْجَارِيَةِ لِوُجُوْدِ الْعِلَّةِ فِيْهَا وَبِهِ يَثْبُتُ الْحُكْمُ فِى الثَّيِّبِ الصَّغِيْرَةِ وَكَذٰلِكَ قُلْنَا اَلطَّوَافُ عِلَّةٌ سُقُوْطِ نَجَاسَةِ السُّؤْرِ فِى سُؤْرِ الْهِرَّةِ فَيَتَعَدَّى الْحُكْمُ اِلَى سُؤْرِ سَوَاكِنِ الْبُيُوْتِ لِوُجُوْدِ الْعِلَّةِ وَ بُلُوْغِ الْغُلاَمِ عَنْ عَقْلٍ عِلَّةٌ زَوَالِ وِلاَيَةِ الانْكَاحِ فَيَزُوْلُ الوِلاَيَةُ عَنِ الْجَارِيَةِ بِحُكْمِ هٰذِهِ العِلَّةِ

Thereafter *(after discussing the manners in which the Illat is ascertained)* **we say that Qiyaas is of two types. One type is where the ruling which is being applied is the same as the ruling in the original** *(known as 'Itiehaadun Noa')'* **and the second** *(type of Qiyaas)* **is where the ruling which is being applied is** *(is not the exact same but)* **similar to the ruling applied in the original** *(known as 'Itiehaadul Jins')***.**

An example of 'Itiehaadun No'a' *(where the ruling which is being applied is the same as the ruling in the original)* **is what we have said that not reaching puberty is the Illat for granting** *(the father)* **the right to perform the Nikaah of his immature son as well as for his immature daughter because of the Illat being the same in both** *(the very same ruling applies to the immature daughter in the same manner that it applies to the immature son)* **and the same ruling will apply to the immature girl who was previously married as well** *(the father will have the right to perform her Nikaah as well in the same manner as stated above)***.**

Similarly we say that constantly coming and going is the Illat for removing the ruling of impurity for the saliva of a cat, thus the very same ruling applies to the saliva of other animals that reside in the home because of the same Illat

being present *(in both cats and other animals that reside in the home)***.**

(Similarly, just as) **Attaining puberty with sanity is the Illat for the relinquishment of the right of decision from the father in the case of the son, so too will the right of decision be relinquished from the father because of the same Illat** *(when the daughter reaches puberty and is sane then in a similar manner the right will be relinquished from the father)***.**

Example of 'Itiehaadul Jins'

وَمِثَالُ الِاتِّحَادِ فِى الْجِنْسِ مَا يُقَالُ كَثْرَةُ الطَّوَافِ عِلَّةُ سُقُوْطِ حَرَجِ الِاسْتِيْذَانِ فِىْ حَقِّ مَا مَلَكَتْ اَيْمَانُنَا فَيَسْقُطُ حَرَجُ نَجَاسَةِ السُّؤْرِ بِهٰذِهِ الْعِلَّةِ فَاِنَّ هٰذَا الْحَرَجَ مِنْ جِنْسِ ذٰلِكَ الْحَرَجِ لَامِنْ نَوْعِهِ وَكَذٰلِكَ الصِّغْرُ عِلَّةُ وِلَايَةِ التَّصَرُّفِ لِلأَبِ فِى الْمَالِ فَيَثْبُتُ وِلَايَةُ التَّصَرُّفِ فِى النَّفْسِ بِحُكْمِ هٰذِهِ الْعِلَّةِ وَاِنَّ بُلُوْغَ الْجَارِيَةِ عَنْ عَقْلٍ عِلَّةُ زَوَالِ وِلَايَةِ الأَبِ فِى الْمَالِ فَيَزُوْلُ فِىْ حَقِّ النَّفْسِ بِهٰذِهِ الْعِلَّةِ

An example of 'Itiehaadul Jins' is what has been said that constantly coming and going is the Illat for removing the difficulty of seeking permission for those slaves that we own *(each time they enter)* **and** *(in a similar manner)* **removes the ruling of impurity from the saliva of a cat, because of it having the same Illat** *(of constantly coming and going).* **This difficulty** *(caused by the cat's saliva being impure)* **is similar to that difficulty** *(caused by one's slaves having to seek permission every time they enter)* **but not exactly the same.**

Similarly not reaching puberty is the Illat for granting the father the right to make decision in the wealth of his immature child and in a similar manner, because of the same Illat, grants him the right to make decisions concerning her person as well *(such as to perform her Nikaah)* **and just as the girl reaching puberty, when she is**

sane, is the Illat for relinquishing the fathers right of decision in her wealth so too does this same Illat relinquish his right to make decision regarding her person.

The Illat must be wide-ranging

ثُمَّ لاَبُدَّ فِىْ هٰذَا النَّوْعِ مِنَ الْقِيَاسِ مِن تَجْنِيْسِ الْعِلَّةِ بِأَنْ نَقُوْلَ اِنَّمَا يَثْبُتُ وِلاَيَةُ الأَبِ فِىْ مَالِ الصَّغِيْرَةِ لاِنَّهَا عَاجِزَةٌ عَنِ التَّصَرُّفِ بِنَفْسِهَا فَأَثْبَتَ الشَّرْعُ وِلاَيَةَ الأبِ كَىْ لاَ يَتَعَطَّلَ مَصَالِحُهَا الْمُتَعَلِّقَةُ بِذٰلِكَ وَقَدْ عَجَزَتْ عَنِ التَّصَرُّفِ فِىْ نَفْسِهَا فَوَجَبَ الْقَوْلُ بِوِلاَيَةِ الأبِ عَلَيْهَا وَعَلٰى هٰذَا نَظَائِرُه

Then it is necessary in this type of Qiyaas *(Qiyaas in 'Itiehaadul Jins')***for the Illat to wide-ranging** *(comprehensive and inclusive such that it can be applied in both the original and derived rulings)***that we say that the right to make decision in the wealth of the immature girl is established for the father because she is incapable of administrating it on her own, which is why the Shari'ah has established the right of decision for the father so that she may not be deprived of the capabilities required to administer her wealth.** *(In a similar manner)* **She is most definitely incapable of making decision regarding her own person** *(due to her immaturity)***, thus it became necessary to establish the right of decision for her father over her** *(so that she will not be deprived of the capabilities needed to decide on that which will benefit her)***. Other similar rulings are dealt with in the same manner.**

The ruling of 'Itiehaadun No'a'

وَحُكْمُ الْقِيَاسِ الأَوَّلِ أَن لاَ يَبْطُلَ بِالْفَرْقِ لاِنَّ الأَصْلَ مَعَ الْفَرْعِ لَمَّا اتَّحَدَ فِى الْعِلَّةِ وَجَبَ اِتِّحَادُهُمَا فِىْ الْحُكْمِ وَ اِنِ افْتَرَقَا فِىْ غَيْرِ هٰذِهِ الْعِلَّةِ وَحُكْمُ الْقِيَاسِ الثَّانِىْ فَسَادُهُ بِمُمَانَعَةِ التَّجْنِيْسِ وَالفَرْقِ الْخَاصِ هُوَ بَيَانُ أَنَّ تَأْثِيْرَ

الصِّغْرِ فِىْ وِلاَيَةِ التَّصَرُّفِ فِى الْمَالِ فَوْقَ تَأْثِيْرِهِ فِىْ وِلاَيَةِ التَّصَرُّفِ فِىْ النَّفْسِ

The ruling of the first type of Qiyaas *(‘Itiehaadun No’a’, where the ruling which is being applied is the same as the ruling in the original)* **is that the Qiyaas will not be invalid because of the difference** *(between the original and that for which the ruling was derived)* **because once the Illat is the same in both then it is necessary for the ruling to be the same as well, even if there characteristics may be different in everything else besides this Illat**.

The ruling for 'Itiehaadul Jins'

The ruling of the second type of Qiyaas *(‘Itiehaadul Jins’, where the ruling which is being applied is not the exact same but similar to the ruling applied in the original)* **is that the Qiyaas will be invalid if the Illat is not wide-ranging** *(comprehensive and inclusive)* **or a vast difference** *(between the original and that for which the ruling is being derived)* **is pointed out,** *(for example if one were)* **to point out that having the right of decision in the wealth** *(of an immature child)* **is required more frequently than having the right of decision over her person** *(thus the necessity required in both is vastly different and the ruling can therefore not be the same)***.**

The third type of Qiyaas

وَبَيَانُ الْقِسْمِ الثَّالِثِ وَ هُوَ الْقِيَاسُ بِعِلَّةٍ مُسْتَنْبَطَةٍ بِالرَّأْيِ وَ الاِجْتِهَادِ ظَاهِرٌ وَتَحْقِيْقُ ذَلِكَ اِذَا وَجَدْنَا وَصْفًا مُنَاسِباً لِلْحُكْمِ وَ هُوَ بِحَالٍ يُوْجِبُ ثُبُوْتَ الْحُكْمِ وَيَتَقَاضَاهُ بِالنَّظْرِ اِلَيْهِ وَقَدِ اقْتَرَنَ بِهِ الْحُكْمُ فِى مَوْضِعِ الاجْمَاعِ يُضَافُ الْحُكْمُ اِلَيْهِ لِلْمُنَاسَبَةِ لاَلِشَهَادَةِ الشَّرْعِ بِكَوْنِهِ عِلَّةً وَ نَظِيْرُه اِذَا رَأَيْنَا شَخْصاً اَعْطَى فَقِيْراً دِرْهَمًا غَلَبَ عَلَى الظَّنِّ أَنَّ الاعْطَاءَ لِدَفْعِ

حَاجَةِ الْفَقِيْرِ وَتَحْصِيْلِ مَصَالِحِ الثَّوَابِ اِذَا عُرِفَ هٰذَا فَنَقُوْلُ اِذَا رَأَيْنَا وَصْفًامُنَاسِباً لِلْحُكْمِ وَقَدِ اقْتَرَنَ بِهِ الْحُكْمُ فِىْ مَوْضِعِ الاجْمَاعِ يَغْلِبُ الظَّنُّ بِاِضَافَةِ الْحُكْمِ اِلٰى ذٰلِكَ الْوَصْفِ وَغَلَبَةُ الظَّنِّ فِى الشَّرْعِ تُوْجِبُ الْعَمَلَ عِنْدَ اِنْعِدَامِ مَا فَوْقَهَا مِنَ الدَّلِيْلِ بِمَنْزِلَةِ الْمُسَافِرِاِذَا غَلَبَ عَلٰى ظَنِّهِ اَنَّ بِقُرْبِهِ مَآءً لَمْ يَجُزْ لَهُ التَيَمُّمُ وَعَلٰى هٰذَا مَسَائِلُ التَّحَرِّىْ

The third type of Qiyaas, which is that Qiyaas wherein the Illat was ascertained through deliberation and reflection, is clear *(obvious)*. **The details of this** *(form of Qiyaas)* **is that when we find a characteristic suitable for the ruling and that characteristic is such that it necessitates the application of a ruling and apparently requires it when examined, and a ruling has already been affixed to it** *(in a previous ruling)* **through Ijmaa, then the ruling will attributed to that characteristic** *(it will be considered to be the Illat)* **because of it being suitable** *(to serve as the Illat)* **and not because it has been affirmed by Shari'ah to be the Illat.**

An example of this is if we see a person giving the poor a dirham. The obvious reason for this *(the reason for giving the poor a dirham)* **that comes to mind is that he gave it so that the needs of the poor can be fulfilled and he may receive reward** *(and we will say the Illat here is the neediness of the poor, even though it has not been clearly stated)***.**

Once this *(example above)* **is understood then we will** *(again)* **say that when we see a characteristic that is suitable for the ruling to be applied and a ruling has already been applied** *(previously)* **to that characteristic through Ijmaa, discretion dictates that the ruling be affixed to that characteristic** *(that it should be considered the Illat for that ruling)*. **The Shari'ah has made acting on one's discretion Waajib when none of the other above mentioned proofs** *(Quraan, Sunnat, Ijmaa)* **are present, such as when according to the discretion of a**

traveller he believes that there is water close by, it will not be permissible for him to perform Tayammum *(it is Waajib upon him to act upon his discretion)*. **In a similar manner is** *(it is Waajib to act upon one's discretion in)* **ascertaining the direction of Qiblah.**

The ruling of this type of Qiyaas

وَحُكْمُ هٰذَا الْقِيَاسِ أَنْ يَبْطُلَ بِالْفَرَقِ الْمُنَاسِبِ لاَنَّ عِنْدَه يُوْجَدُ مُنَاسِبٌ سِوَاهُ فِىْ صُوْرَةِ الْحُكْمِ فَلاَ يَبْقَى الظَّنُّ بِإِضَافَةِ الْحُكْمِ اِلَيْهِ فَلاَ يَثْبُتُ الْحُكْمُ بِهِ لانَّهُ كَانَ بِنَاءً عَلىٰ غَلَبَةِ الظَّنِّ وَقَدْ بَطَلَ ذٰلِكَ بِالْفَرْقِ وَعَلىٰ هٰذَا كَانَ الْعَمَلُ بِالنَّوْعِ الأوَّلِ بِمَنْزِلَةِ الْحُكْمِ بِالشَّهَادَةِ بَعْدَ تَزْكِيَةِ الشَّاهِدِ وَتَعْدِيْلِهِ وَالنَّوْعِ الثَّانِىْ بِمَنْزِلَةِ الشَّهَادَةِ عِنْدَ ظُهُوْرِ الْعَدَالَةِ قَبْلَ التَّزْكِيَةِ وَالنَّوْعِ الثَّالِثِ بِمَنْزِلَةِ شَهَادَةِ الْمَسْتُوْرِ

The ruling of this type of Qiyaas *(wherein the illat was ascertained through deliberation)* **is that it will be invalid if a difference is established** *(between the ruling one is making Qiyaas upon and that for which it is being sought)*. **The reason for this** *(why it will be invalid)* **is that once a difference is established another characteristic for the ruling is found, besides that which was initially considered** *(to be the Illat)*, **thus discretion will no longer dictate that the ruling should be affixed to it and the ruling will not be established by it** *(the first characteristic cannot be the Illat)*. **The reason for this is that** *(it was first considered to be the illat)* **by strong discretion, which no longer remains due to the difference which has been established.**

Based upon this *(the three types of Qiyaas and the difference between them)*, **the first type of Qiyaas** *(where the Illat was ascertained by the Quraan or Sunnat)* **is similar to passing judgement on testimony after the integrity and reliability of the witnesses have been established** *(and there will be no*

doubt to its validity and authenticity), **the second type of Qiyaas** *(where the illat was ascertained through Ijmaa)* **is similar to passing judgement on testimony when the witnesses appear to be reliable before their credibility has been established** *(and it will be Waajib to act upon)* **and the third type of Qiyaas** *(where the illat was ascertained by discretion)* **is similar to passing judgement on the testimony of witnesses whose condition is unknown** *(and it will be Waajib to act upon until proven to be false)*.

Objecting to Qiyaas

فصل

اَلاسْوِلَةُ الْمُتَوَجِّهَةُ عَلَى الْقِيَاسِ ثَمَانِيَةٌ اَلْمُمَانَعَةُ وَالْقَوْلُ بِمُوْجَبِ الْعِلَّةِ وَالْقَلْبُ وَالْعَكْسُ وَفَسَادُ الْوَضْعِ وَالْفَرْقُ وَالنَّقْضُ وَالْمُعَارَضَةُ

Objections to Qiyaas can occur in eight ways; refutation, what the Illat infers to, by reversal, 'Aks', by the Illat being inappropriate for the ruling, differentiation, disproval, Mua'aaridhah.

Objection through refutation

أَمَّا الْمُمَانَعَةُ فَنَوْعَانِ اَحَدُهُمَا مَنْعُ الْوَصْفِ وَالثَّانِىْ مَنْعُ الْحُكْمِ وَمِثَالُه فِىْ قَوْلِهِمْ صَدَقَةُ الْفِطْرِ وَجَبَتْ بِالْفِطْرِ فَلاَ تَسْقُطُ بِمَوْتِهِ لَيْلَةَ الْفِطْرِ قُلْنَا لاَ نُسَلِّمُ وُجُوْبَهَا بِالْفِطْرِ بَلْ عِنْدَنَا تَجِبُ بِرَأْسِ يَمُوْنَه وَيَلِى عَلَيْهِ

Refutation *(in Qiyaas)* **is of two types; refutation of the Illat and refutation of the ruling. An example of this** *(i.e. refutation of the Illat)* **is there** *(Imaam Shaafie and his students)* **saying that Sadaqaatul Fitr becomes Waajib because of the period of fasting coming to end, thus he will not be absolved from it if he passes away on the eve of Eid** *(according to Imaam Shaafie)*. **We** *(the Hanafi scholars)* **say**

that we do not accept that it is Waajib because of the period of fasting coming to an end *(that is we refute the Illat)* **but according to us it is Waajib because** *(the illat is)* **the presence of that person** *(at the time when the period of fasting ends)* **and those for whom he is responsible** *(those under his care such as his children, etc)***.**

وَكَذَلِكَ اِذَا قِيْلَ قَدْرُ الزَّكَوٰةِ وَاجِبٌ فِى الذِّمَّةِ فَلاَ يَسْقُطُ بِهَلاكِ النِّصَابِ كَالدَّيْنِ قُلْنَا لاَ نُسَلِّمُ أَنَّ قَدْرَ الزَّكَوٰةِ وَاجِبٌ فِى الذِّمَّةِ بَلْ أَدَائُه وَاجِبٌ وَ لِئِنْ قَالَ اَلْوَاجِبُ اَدَائُه فَلَا يَسْقُطُ بِالْهَلاَكِ كَالدَّيْنِ بَعْدَ الْمُطَالَبَةِ قُلْنَا لاَ نُسَلِّمُ أَنَّ الأَدَاءَ وَاجِبٌ فِىْ صُوْرَةِ الدَّيْنِ بَلْ حَرُمَ الْمَنْعُ حَتّٰى يَخْرُجَ عَنِ الْعُهْدَةِ بِالتَّخْلِيَةِ وَهٰذَا مِنْ قَبِيْلِ مَنْعِ الْحُكْمِ

Similarly if it is said that the amount of Zakaat is Waajib on a person and will therefore not fall away by the loss of that amount *(the Zakaat will still need to be paid even if his wealth is lost after it became Waajib upon him, according to Imaam Shaafie)* **such as in the case of debt** *(if one person owes another money as debt it will not fall away if his wealth is lost)***, we say** *(the Hanafi scholars)* **that we do not accept that Zakaat is Waajib on a person but rather to pay it is Waajib.**

If you were to *(object and)* **say that even if only paying it is Waajib, it will still not fall away if his wealth is destroyed** *(but will still remain Waajib for him to pay)* **just as when payment for a debt is sought** *(it still remains Waajib to pay even if all his wealth is destroyed)* **then we will reply that we do not accept that payment is Waajib in the case when payment of the debt is sought but rather we say that refusal** *(to pay the debt)* **is Haraam such that he may be freed from this obligation through 'Takhleeyah'** *(the creditor can take possession of his property to the value of the debt that he is owed)***. This is an example of refutation of the ruling.**

وَكَذٰلِكَ اِذَا قَالَ اَلمَسْحُ رُكْنٌ فِىْ بَابِ الْوُضُوْءِ فَلْيُسَنَّ تَثْلِيْثُه كَالْغَسْلِ قُلْنَا لاَ نُسَلِّمُ أَنَّ التَّثْلِيْثَ مَسْنُوْنٌ فِى الْغَسْلِ بَلْ اِطَالَةُ الْفِعْلِ فِىْ مَحَلِّ الْفَرْضِ زِيَادَةً عَلَى الْمَفْرُوْضِ كَاِطَالَةِ الْقِيَامِ وَالْقِرَأةِ فِىْ بَابِ الصَّلٰوةِ غَيْرَ أَنَّ الاِطَالَةَ فِىْ بَابِ الْغُسْلِ لاَ يُتَصَوَّرُ اِلاَّ بِالتَّكْرَارِ لاسْتِيْعَابِ الْفِعْلِ كُلَّ الْمَحَلِّ وَبِمِثْلِهِ نَقُوْلُ فِىْ بَابِ الْمَسْحِ بِأَنَّ الاِطَالَةَ مَسْنُوْنٌ بِطَرِيْقِ الاسْتِيْعَابِ

Similarly *(another example of refutation of the ruling is)* **when it is said** *(by the Shaafie scholars)* **that Masah is a fundamental act in Wudhu** *(Fardh just as washing the face, hands, and feet)***, then to make Masah three times will be Sunnat just as washing** *(the face, hands and feet is Sunnat to wash three times)***, we say that we do not accept that washing each limb three times is Sunnat but rather prolonging the act to more than what has been made Fardh** *(is what is actually Sunnat)* **such as lengthening Qiyaam and Qiraat in Salaah** *(to more than what is Fardh is Sunnat)* **except that lengthening the act** *(of washing)* **in Wudhu is not possible except by repetition** *(i.e. washing three times)* **as the act already extends to the entire portion** *(since the act cannot be lengthened by increasing the area to washed because the entire area is already washed as part of the Fardh, we cannot only lengthen it by washing it three times instead of three)* **and we say the same for Masah** *(that it is Sunnat to lengthen the act of washing by increasing the area to be washed)* **whereby lengthening the act is possible by making Masah of the entire head** *(thus there is no need for repetition as the exact requirement of Sunnat is fulfilled here, and that is prolonging the Fardh act to more than what has been made Fardh)***.**

وَكَذٰلِكَ يُقَالُ التَّقَابُلُ فِىْ بَيْعِ الطَّعَامِ بِالطَّعَامِ شَرْطٌ كَالنُّقُوْدِ قُلْنَا لاَ نُسَلِّمُ أَنَّ التَّقَابُضَ شَرْطٌ فِىْ بَابِ النَّقُوْدِ بَلِ الشَّرْطُ تَعْيِيْنُهَا كَىْ لاَ يَكُوْنَ بَيْعُ النَّسْئَةِ بِالنَّسِيْئَةِ غَيْرَ أَنَّ النُّقُوْدَ لاَ تَتَعَيَّنُ اِلاَّ بِالْقَبْضِ عِنْدَنَا

Similarly *(the third example of refutation of the ruling)* **it has been said that taking possession at the same time is a condition** *(for the validity of the transaction)* **in sale of food for food just as** *(it is a condition)* **in the sale of gold** *(for gold)* **and silver** *(for silver)*. **We say we do not accept that taking possession at the same time is a condition for the validity in the sale of gold** *(for gold)* **and silver** *(for silver)* **but rather the condition is specification** *(of the gold or silver)* **so that it will not lead to sale of credit for credit** *(whereby the price and goods will both be handed over at a later date)* **except that according to us** *(Hanafi scholars)* **specification is only possible in the case of gold and silver by taking possession.**

Objection to the inference of the Illat

وَ أَمَّا الْقَوْلُ بِمُوْجَبِ الْعِلَّةِ فَهُوَ تَسْلِيْمُ كَوْنِ الْوَصْفِ عِلَّةً وَ بَيَانُ أَنَّ مَعْلُوْلَهَا غَيْرُ مَا اِدَّعَاهُ الْمَعَلِّلُ وَمِثَالُه اَلْمِرْفَقُ حَدٌّ فِىْ بَابِ الْوُضُوْءِ فَلاَ يَدْخُلُ تَحْتَ الْغُسْلِ لانَّ الْحَدَّ لاَ يَدْخُلُ تَحْتَ المَحْدُوْدِ قُلْنَا اَلْمِرْفَقُ حَدُّ السَّاقِطِ فَلاَ يَدْخُلُ تَحْتَ حُكْمِ السَّاقِطِ لانَّ الْحَدَّ لاَ يَدْخُلُ فِى الْمَحْدُوْدِ

As far as the objection to the inference of the Illat is concerned; it is where you accept the Illat but explain that it infers to other than what the Mu'alil *(one who derived the Illat)* **claims it infers to. An example of this is** *(what Imaam Zufar says that)* **the elbow is the limit** *(for washing)* **in Wudhu and will therefore not be compulsory to wash because the limit is not included in the action. We** *(the scholars of the Hanafi Madhab)* **say that the elbow is limit of termination** *(that is it indicates where the action terminates)* **and will therefore not be included in the ruling of termination because the limit is not included in the action.**

وَكَذٰلِكَ يُقَالُ صَوْمُ رَمَضَانَ صَوْمُ فَرْض فَلاَ يَجُوْزُ بِدُوْنِ التَّعْيِيْنِ كَالْقَضَاءِ قُلْنَا صَوْمُ الْفَرْضِ لاَ يَجُوْزُ بِدُوْنِ التَّعْيِيْنِ اِلاَّ اَنَّه وُجِدَ التَّعْيِيْنُ

هٰهُنَا مِنْ جِهَةِ الشَّرْعِ وَ لِئِنْ قَالَ صَوْمُ رَمَضَانَ لاَ يَجُوْزُ بِدُوْنِ التَّعْيِيْنِ مِنَ الْعَبْدِ كَالْقَضَاءِ قُلْنَا لاَ يَجُوْزُ الْقَضَاءُ بِدُوْنِ التَّعْيِيْنِ اِلاَّ أَنَّ التَّعْيِيْنَ لَمْ يَثْبُتْ مِنْ جِهَةِ الشَّرْعِ فِى الْقَضَاءِ فَلِذَلِكَ يَشْتَرِطُ تَعْيِيْنُ الْعَبْدِ وَ هُنَا وُجِدَ التَّعْيِيْنُ مِنْ جِهَةِ الشَّرْعِ فَلاَ يَشْتَرِطُ تَعْيِيْنُ الْعَبْدِ

Similarly *(another example of objection to the inference of the Illat)* **is what has been said** *(Imaam Shaafie)* **that the fast of Ramadaan is a Fardh fast and will therefore not be permissible except with specification** *(that it is a fast of Ramadaan)* **such as in the case of Qadhaa fasts** *(where by it is only permissible if specified to be a Qadhaa fast)***. We say that Fardh fast is only permissible with specification** *(just as Imaam Shaafie says)* **except that in this case** *(of the fasts of Ramadaan)* **the Shari'ah has already specified it** *(to be only for the fast of Ramadaan, thus there is no need for specification and mere intention to fast will suffice)***.**

If Imaam Shaafie were to say that it is only permissible with specification from a person just as Qadhaa fasts *(need to be specified by a person)* **then we would say that most definitely Qadhaa fasts are only permissible with specification, and since the Shari'ah has not specified it, it become necessary for a person to specify it himself. Whereas in the case of Ramadaan, specification has been made by Shari'ah, thus there is no need for a person to specify it himself.**

Objection by reversal

وَ أَمَّا الْقَلْبُ فَنَوْعَانِ اَحَدُهُمَا أَنْ يَجْعَلَ مَا جَعَلَهُ الْمُعَلِّلُ عِلَّةً لِلْحُكْمِ مَعْلُوْلاً لِذٰلِكَ الْحُكْمِ وَمِثَالُه فِى الشَّرْعِيَاتِ جَرْيَانُ الرِّبَوا فِى الْكَثِيْرِ يُوْجِبُ جَرْيَانَه فِى الْقَلِيْلِ كَالأَثْمَانِ فَيَحْرُمُ بَيْعُ الْحَفْنَةِ مِنَ الطَّعَامِ بِالْحَفْنَتَيْنِ مِنْهُ قُلْنَا لاَ بَلْ جَرَيَانُ الرِّبٰوا فِى الْقَلِيْلِ يُوْجِبُ جَرَيَانَهُ فِى الْكَثِيْرِ كَالأَثْمَانِ

Reversal is of two types; *(the first type of reversal is)* **to take what the Mu'alil has made the Illat of the ruling to be the result of the ruling** *(that is instead of the stipulated Illat being the cause of the ruling it is taken to be the result of the ruling)***. An example of this in the laws of Shari'ah is the occurrence of Riba in large quantities necessitating the occurrence of Riba in small quantities as is the case with gold and silver** *(whereby it will Riba whether the amount are small or large, if not in equal quantities)***, thus** *(this will necessitate that)* **sale of one handful of food for two handfuls of food will be Haraam** *(as excess in small quantities is also Haraam based on this rationale)***. We say that it is the opposite, in that the occurrence of Riba in small quantities necessitates the occurrence of Riba in large quantities as well as is the case of gold and silver** *(and since the smallest quantity of measurement in which Riba can occur is half a Saa'a as there is no Shar'ie measurement smaller than this, the sale of one handful of food for two will be permissible)***.**

وَكَذَلِكَ فِيْ مَسْئَلَةِ الْمُلْتَجِئِ بِالْحَرَمِ حُرْمَةُ اِتْلاَفِ النَّفْسِ يُوْجِبُ حُرْمَةَ اِتْلاَفِ الطَّرَفِ كَالصَّيْدِ قُلْنَا بَلْ حُرْمَةُ اِتْلاَفِ الطَّرَفِ يُوْجِبُ حُرْمَةَ اِتْلاَفِ النَّفْسِ كَالصَّيْدِ فَاِذَا جُعِلَتْ عِلَّتُهُ مَعْلُوْلاً لِذَلِكَ الْحُكْمِ لاَ تَبْقىٰ عِلَّةً لَه لِاسْتِحَالَةِ أَنْ يَكُوْنَ الشَّئُ الْوَاحِدُ عِلَّةً لِلشَّرْعِ وَمَعْلُوْلاً لَه

Similarly in the ruling of taking refuge in the Haram; the prohibition of killing *(a person as punishment for murder)* **necessitates the prohibition of severing limbs** *(as punishment for a crime such stealing)* **as is the case with hunting** *(the prohibition of hunting and killing an animal necessitates the prohibition of severing its limbs)***. We say** *(it is the other way around)* **that the prohibition of severing limbs necessitates the prohibition of killing as is the case in hunting** *(where the prohibition of severing the limb of an animal necessitates the prohibition of hunting an animal)***.**

Once the illat has been made the result of the ruling then it will no longer remain as the Illat for the ruling because of it being impossible for one thing to be the Illat for the ruling and the result as well.

The second type of reversal

وَ النَّوْعُ الثَّانِيْ مِنَ الْقَلْبِ أَنْ يَجْعَلَ السَّائِلُ مَا جَعَلَهُ الْمُعَلِّلُ عِلَّةً لِمَا ادَّعَاهُ مِنَ الْحُكْمِ عِلَّةً لِضِدِّ ذَلِكَ الْحُكْمِ فَيَصِيْرُحُجَّةً لِلسَّائِلِ بَعْدَ أَنْ كَانَ حُجَّةً لِلْمُعَلِّلِ مِثَالُه صَوْمُ رَمَضَانَ صَوْمُ فَرْضٍ فَيَشْتَرِطُ التَّعْيِيْنُ لَهُ بَعْدَ مَا تَعَيَّنَ الْيَوْمُ لَه كَالْقَضَاءِ

The second type of reversal is when the same Illat which is claimed to derive the ruling is used to prove the opposite of that ruling, thus becoming a proof for the objector after being a proof for the one who derived the Illat first. An example of this is *(saying that)* **the fast of Ramadaan is Fardh Fast therefore specification of the fast** *(to be of Ramadaan)* **is a condition** *(for its validity)* **as is the case of Qadhaa fasts. We say that since the fast of Ramadaan are Fardh Fasts specification is not a condition after the Shari'ah has specified a day for it as is the case with Qadhaa Fasts** *(whereby if a particular day has been specified for a Qadhaa fast then it will be specified to be for that fast)***.**

Objection by 'Aks

وَأَمَّا الْعَكْسُ فَنَعْنِيْ بِهِ أَن يَّتَمَسَّكَ السَّائِلُ بِأَصْلِ الْمُعَلِّلِ عَلٰى وَجْهٍ يَكُوْنُ الْمُعَلِّلُ مَضْطَرًّا اِلٰى وَجْهِ الْمُفَارَقَةِ بَيْنَ الأَصْلِ وَالْفَرْعِ وَمِثَالُه اَلْحُلِيُّ أُعِدَّتْ لِلاِبْتِذَالِ فَلاَ يَجِبُ فِيْهَا الزَّكوٰةُ كَثِيَابِ الْبَذْلَةِ قُلْنَا لَوْ كَانَ الْحُلِيُّ بِمَنْزِلَةِ الثِّيَابِ فَلَا تَجِبُ الزَّكوٰةُ فِيْ حُلِيِّ الرِّجَالِ كَثِيَابِ الْبَذْلَةِ

As far as 'Aks' is concerned, it refers to where the objector derives a ruling from the original which the Mu'alil made Qiyaas on in such a manner that forces the Mu'alil to differentiate between the original and that for which the ruling was derived. An example of this is jewellery made for adornment whereby Zakaat is not Waajib on it *(for women according to Imaam Shaafie)* **just as the clothing one wears** *(has no Zakaat on it)***. We say that if jewellery is the same as clothing then Zakaat is not Waajib on the jewellery of men just as the clothing one wears** *(has no Zakaat on it)*

Objection by the Illat being inappropriate for the ruling

وَ أَمَّا فَسَادُ الْوَضْعِ فَالْمُرَادُ بِهِ أَنْ يُّجْعَلَ الْعِلَّةُ وَصْفاً لاَ يَلِيْقُ بِذٰلِكَ الْحُكْمِ مِثَالُه فِيْ قَوْلِهِمْ فِيْ اِسْلاَمِ أَحَدِ الزَّوْجَيْنِ اِخْتِلاَفُ الدَّيْنِ طَرَأَ عَلَى النِّكَاحِ فَيُفْسِدُه كَارْتِدَادِ اَحَدِ الزَّوْجَيْنِ فَاِنَّه جَعَلَ الْاِسْلاَمَ عِلَّةً لِزَوَالِ الْمِلْكِ قُلْنَا اَلْاِسْلاَمُ عُهِدَ عَاصِمًا لِلْمِلْكِ فَلاَ يَكُوْنُ مُؤَثِّرًا فِيْ زَوَالِ الْمِلْكِ وَ كَذٰلِكَ فِيْ مَسْئَلَةِ طَوْلِ الْحُرَّةِ اَنَّه حُرٌّ قَادِرٌ عَلَى النِّكَاحِ فَلاَ يَجُوْزُ لَهُ الْاَمَةُ كَمَا لَوْ كَانَتْ تَحْتَه حُرَّةٌ قُلْنَا وَصْفُ كَوْنِه حُرًّا قَادِرًا يَقْتَضِيْ جَوَازَ النِّكَاحِ فَلاَ يَكُوْنُ مُؤَثِّرًا فِيْ عَدَمِ الْجَوَازِ

As far as the Illat not being appropriate for the ruling is concerned; it is where that Illat is made to be such a characteristic that does not fit with that ruling. An example of this is in their *(Imaam Shaafie's)* **saying regarding the acceptance of Islaam by one of the spouses that difference of Deen has come into the Nikaah therefore it** *(this difference of Deen)* **invalidates the Nikaah, as in the case of one of the spouses abandoning Islaam** *(whereby the Nikaah will be invalidated)***. Here Imaam Shaafie made the acceptance of Islaam an Illat for the invalidation of the right of Nikaah. We say that Islaam is known to secure**

rights and will therefore have no role in the invalidation of the right of Nikaah.

Similarly in the law of having the ability to marry a free woman, *(imaam Shaafie says)* **he is free and capable of marrying** *(a free woman)* **therefore a slave will not be permissible for him** *(to marry)* **just as if there was a free woman in his wedlock** *(whereby it would be impermissible for him to marry a slave)*. **We say him being free and capable of marrying necessitates the permissibility of Nikaah and will therefore not have any effect in making it impermissible.**

Objection by disproval

وَ اَمَّا النَّقْضُ فَمِثْلُ مَا يُقَالُ اَلْوُضُوْءُ طَهَارَةٌ فَيَشْتَرِطُ لَهُ النِّيَّةُ كَالتَّيَمُّمِ قُلْنَا يَنْتَقِضُ بِغَسْلِ الثَّوْبِ وَالْاِنَاءِ

As far as disproval is concerned *(whereby the stipulated Illat is disproven because in some instance the same ruling will not apply despite the presence of that Illat)*, **for example what has been said** *(by Imaam Shaafie)* **that Wudhu is means of attaining purity thus Niyyat** *(intention)* **is a precondition** *(for its validity)* **just as in Tayammum** *(Niyyat is a condition)*. **We say that this Qiyaas will be disproved by washing** *(impure)* **clothing and** *(impure)* **utensils** *(as washing is also a means of attaining purity of the clothing or utensils but despite the Illat being present your do not state that Niyyat is a precondition for its validity)*.

Objection by counteraction

وَ اَمَّا الْمُعَارَضَةُ فَمِثْلُ مَا يُقَالُ اَلْمَسْحُ رُكْنٌ فِي الْوُضُوْءِ فَلْيُسَنُّ تَثْلِيْثُه كَالْغَسْلِ قُلْنَا اَلْمَسْحُ رُكْنٌ فَلاَ يُسَنُّ تَثْلِيْثُه كَمَسْحِ الْخُفِّ وَالتَّيَمُّمِ

As far as counteraction is concerned *(whereby a proof is cited which counters the deduction of the Mu'alil)***, for example what has been said** *(by Imaam Shaafie)* **that Masah** *(of the head)* **is a fundamental act of Wudhu** *(just as washing the face, hands and feet)***, thus make Masah three times will be Sunnat just as in washing** *(the face, hands and feet it is Sunnat to wash each part three times)***. We say that Masah is a fundamental act of Wudhu and therefore washing three times will not be Sunnat just as in Masah of leather socks** *(Masah is also a fundamental act here but it is not Sunnat to make Masah three times)* **and in Tayammum** *(to make Masah of the face and hands is a fundamental act but it is not Sunnat to make Masah three times)***.**

Definition of Sabab, Illat and Sharth

فصل

اَلْحُكْمُ يَتَعَلَّقُ بِسَبَبِه وَيَثْبُتُ بِعِلَّتِه وَ يُوْجَدُ عِنْدَ شَرْطِه فَالسَّبَبُ مَا يَكُوْنُ طَرِيْقًا اِلَىَ الشَّيْئِ بِوَاسِطَتِه كَالطَّرِيْقِ فَاِنَّه سَبَبٌ لِلْوُصُوْلِ اِلٰى الْمَقْصَدِ بِوَاسِطَةِ الْمَشْيِ وَ الْحَبْلِ سَبَبٌ اِلٰى الْمَاءِ بِالْاِدْلاَءِ فَعَلٰى هٰذَا كُلُّ مَا كَانَ طَرِيْقًا اِلَى الْحُكْمِ بِوَاسِطَتِه يُسَمّٰى سَبَبًا لَه شَرْعًا وَ يُسَمَّى الْوَاسِطَةُ عِلَّةً مِثَالُه فَتْحُ بَابِ الْاَصْطَبَلِ وَ الْقَفَصِ وَحَلُّ قَيْدِ الْعَبْدِ فَاِنَّه سَبَبٌ لِلتَّلْفِ بِوَاسِطَةٍ تُوْجَدُ مِنَ الدَّابةِ وَ الطَّيْرِ وَ الْعَبْدِ

A ruling is linked to its Sabab *(method in which the ruling is derived)***, is established by its Illat** *(principle cause of the ruling)* **and is found when its Sharth** *(condition)* **is fulfilled. Thus Sabab is that which leads to something** *(the ruling)* **by means of something, such as a path. Thus the path** *(Sabab)* **by walking** *(Illat)* **leads to the destination** *(Ruling)***.** *(Similarly)* **The rope is the Sabab of obtaining water by throwing the bucket into the well** *(the rope is the Sabab as it leads to water being obtained by means of throwing)***. Thus based upon this, whatever leads to the ruling being**

obtained by means of something will be called the Sabab according to Shari'ah and the means *(through which the ruling is obtained)* **is called the Illat. An example of this is opening the door of the stable, cage or shackles of the slave. As this** *(opening the door or shackles)* **is the Sabab for the loss by means of an action from the animal, bird or slave** *(when the slave or animal runs away then the act of opening will be the Sabab for the loss by the slave or animal running away, which is the Illat)***.**

The ruling will linked to the Illat

وَالسَّبَبُ مَعَ الْعِلَّةِ اِذَا اجْتَمَعَا يُضَافُ الْحُكْمُ اِلَى الْعِلَّةِ دُوْنَ السَّبَبِ اِلاَّ اِذَا تَعَذَّرَتْ الْاِضَافَةُ اِلَى الْعِلَّةِ فَيُضَافُ اِلَى السَّبَبِ حِيْنَئِذٍ وَ عَلٰى هٰذَا قَالَ اَصْحَابُنَا اِذَا دَفَعَ السِّكِّيْنَ اِلىٰ صَبِيٍّ فَقَتَلَ بِه نَفْسَه لاَ يَضْمَنُ وَ لَوْ سَقَطَ مِنْ يَدِ الصَّبِيِّ فَجَرَحَه يَضْمَنُ وَلَوْ حَمَلَ الصَّبِيَّ عَلىٰ دَا بَّةٍ فَسَيَّرَهَا فَجَالَتْ يُمْنَةً وَ يُسْرَةً فَسَقَطَ وَمَاتَ لاَ يَضْمَنُ وَ لَوْ دَلَّ اِنْسَانًا عَلىٰ مَالِ الْغَيْرِ فَسَرَقَه اَوْ عَلٰى نَفْسِهِ فَقَتَلَه اَوْ عَلىٰ قَافِلَةٍ فَقَطَعَ عَلَيْهِمُ الطَّرِيْقَ لاَ يَجِبُ الضَّمَانُ عَلٰى الدَّالِّ

When both the Illat and Sabab are present then the ruling will be linked to the Illat and not the Sabab *(we will say that the ruling came into being as a result of the Illat)* **except if it is not possible to link it to the Illat, whereby it will then be linked to the Sabab.**

Based upon this our scholars *(of the Hanafi Madhab)* **say that if a knife is given to a child and the child kills himself with it, then the one who handed the knife over will not be accountable for the death** *(giving the knife is the Sabab for the death and the Illat for the death is the child using the knife, thus the ruling will be linked to the Illat and it will be said that the child died because of him using the knife)* **but if the knife fell from the hand of the child and injured him then the one**

who handed over the knife will be accountable for the injury *(giving the knife is the Sabab for the injury and the Illat for the injury is the knife falling, and since the ruling cannot be linked to the Illat, because the act of falling was not the act o0f the child, it will be linked to the Sabab and it will be said that the child was injured because the knife was given to him)***.**

If a person placed a child on an animal and he rode it *(on his own)***, on which the animal began trying to shake him off, resulting in the child falling and passing away, the one who placed him on the animal will not be accountable for his death** *(placing the child on the animal is the Sabab for the death and the child riding the animal is the Illat, thus the ruling will be linked to the Illat and it will be said that the child died because of him riding the animal)***.**

If a person informs another of a certain person's wealth, which the other person then goes on to steal or he informs him of *(the whereabouts of)* **another person who he then proceeds to murder or he informs him of** *(the travelling plans of)* **a caravan which he then hijacks, the informant will not be held accountable** *(informing is the Sabab for theft or murder, the act of stealing and murder is the Illat, thus the ruling will be linked to Illat and it will be said that the person was robbed or killed because of the action of the robber or murderer)***.**

A reply to a misconception

وَ هٰذَا بِخِلاَفِ الْمُوْدَعِ اِذَا دَلَّ السَّارِقَ عَلَى الْوَدِيْعَةِ فَسَرَقَهَا اَوْدَلَّ الْمُحْرِمُ غَيْرَه عَلٰى صَيْدِ الْحَرَمِ فَقَتَلَه لِاَنَّ وُجُوْبَ الضَّمَانِ عَلَى الْمُوْدَعِ بِاِعْتِبَارِ تَرْكِ الْحِفْظِ الْوَاجِبِ عَلَيْهِ لَا بِالدَّلَالَةِ وَ عَلَى الْمُحْرِمِ بِاِعْتِبَارِ اَنَّ الدَّلَالَةَ مَحْظُوْرُ اِحْرَامِهِ بِمَنْزِلَةِ مَسِّ الطِّيْبِ وَ لُبْسِ الْمَخِيْطِ فَيَضْمَنُ بِاِرْتِكَابِ

الْمَحْظُوْرِ لاَ بِالدَّلاَلَةِ اِلاَّ اَنَّ الْجِنَايَةَ اِنَّمَا يَتَقَرَّرُ بِحَقِيْقَةِ الْقَتْلِ وَ اَمَّا قَبْلَه فَلاَ حُكْمَ لَه لِجَوَازِ اِرْتِفَاعِ اَثْرِ الْجِنَايَةِ بِمَنْزِلَةِ الْاِنْدِ مَالِ فِىْ بَابِ الْجَرَاحَةِ

This ruling *(mentioned above)* **is contrary to when a trustee informs a thief to the whereabouts of the trust, such that he steals it or if a person in Ihraam informs another of the whereabouts of game, such that he kills it** *(whereby the informant in the above cases, despite only being the Sabab will be held accountable)***. The reason for Dhamaan being Waajib on the trustee is because of him abandoning the safekeeping which was Waajib on him** *(by informing the thief of the whereabouts of the trust)* **and not because of informing** *(the ruling is not being linked to him because he is the Sabab but rather because he abandoned what was incumbent upon him)***. And** *(Dhamaan is Waajib on)* **the one on Ihraam because the act of informing** *(the hunter of the presence of game)* **is prohibited in the state of Ihraam, just as applying perfume and wearing sown clothes in prohibited, thus** *(in the above cases)* **he is accountable because of him indulging in what was prohibited on him and not because of informing** *(that is not because he was the Sabab)***.**

However the crime will only be established if the game is actually killed *(that is he will only be held accountable after the animal is killed)* **as for before** *(the animal is killed)***, there is no ruling for that because it is possible that the effects of the crime may be eliminated** *(by the hunter not killing the game)* **as in the case of a wound healing when injured** *(such that the one who injured him will not be held accountable if the wound healed)***.**

Sabab will have the meaning of the Illat

وَ قَدْ يَكُوْنُ السَّبَبُ بِمَعْنٰى الْعِلَّةِ فَيُضَافُ الْحُكْمُ اِلَيْهِ وَمِثَالُه فِيْمَا يَثْبُتُ الْعِلَّةُ بِالسَّبَبِ فَيَكُوْنُ السَّبَبُ فِىْ مَعْنٰى عِلَّةِ الْعِلَّةِ فَيُضَافُ الْحُكْمُ اِلَيْهِ وَ لِهٰذَا قُلْنَا اِذَا سَاقَ دَابَّةً فَأَتْلَفَ شَيْئًا ضَمِنَ السَّائِقُ وَالشَّاهِدُ اِذَا اَتْلَفَ بِشَهَادَتِهِ مَالاً فَظَهَرَ بُطْلاَنُهَا بِالرُّجُوْعِ ضَمِنَ لانَّ سَيْرَ الدَّابةِ يُضَافُ اِلَى السَّوْقِ وَ قَضَاءُ الْقَاضِى يُضَافُ اِلَى الشَّهَادَةِ لِمَا أَنَّه لاَ يَسَعُه تَرْكُ الْقَضَاءِ بَعْدَ ظُهُوْرِ الْحَقِّ بِشَهَادَةِ الْعَدْلِ عِنْدَهُ فَصَارَ كَالْمَجْبُوْرِ فِى ذٰلِكَ بِمَنْزِلَةِ الْبَهِيْمَةِ بِفِعْلِ السَّائِقِ

Sometimes the Sabab will have the meaning of the Illat because of which the ruling will linked to it. An example of where this can occur is where the Illat is a direct result of the Sabab as in such a case the Sabab will have the meaning of the Illat because when the Illat is a direct result of the Sabab it becomes the Illat *(principle cause)* **of the Illat, thus the ruling will be linked to it.**

As a result of this *(that the Sabab will sometimes have the meaning of the Illat)* **we say if a shepherd herds his flock whereby it results in the damage of something, the shepherd will be responsible for the damage and if a witness causes loss of wealth as a result of his testimony, after which the invalidity of his testimony becomes apparent by retraction** *(he retracted his testimony)***, then the witness will be responsible for the loss. The reason for this** *(why the ruling will linked to the Sabab in the above cases)* **is that the movement of the flock** *(which is the Illat)* **is a direct result of the herding of the shepherd** *(that is the cause of the Illat is the Sabab)* **and the decision of the Qaadhi** *(which is the Illat)* **is a direct result of the testimony because it is not possible for the Qaadhi not to pass judgement after the testimony of a reliable witness, making him compelled** *(to pass judgement)***, in the same manner as the flock with the herding of the shepherd** *(who have no choice but to move)***.**

Sabab will take the place of the Illat

ثُمَّ السَّبَبُ قَدْ يُقَامُ مَقَامَ الْعِلَّةِ عِنْدَ تَعَذُّرِ الاطِّلاَعِ عَلىٰ حَقِيْقَةِ الْعِلَّةِ تَيْسِيْراً لِلأَمْرِ عَلٰى الْمُكَلَّفِ وَيَسْقُطُ بِهِ اِعْتِبَارُ الْعِلَّةِ وَيُدَارُ الْحُكْمُ عَلَى السَّبَبِ وَ مِثَالُه فِى الشَّرْعِيَاتِ اَلنَّوْمُ الْكَامِلُ فَاِنَّه لَمَّا اُقِيْمَ مَقَامَ الْحَدَثِ سَقَطَ اِعْتِبَارُ حَقِيْقَةِ الْحَدَثِ وَ يُدَارُ الاِنْتِقَاضُ عَلٰى كَمَالِ النَّوْمِ وَ كَذٰلِكَ الْخَلْوَةُ الصَّحِيْحَةُ لَمَّا اُقِيْمَتْ مَقَامَ الْوَطْئِ سَقَطَ اِعْتِبَارُحَقِيْقَةِ الْوَطْئِ فَيُدَارُ الْحُكْمُ عَلٰى صِحَّةِ الْخَلْوَةِ فِى حَقِّ كَمَالِ الْمَهْرِ وَلُزُوْمِ الْعِدَّةِ وَكَذٰلِكَ السَّفَرُ لَمَّا اُقِيْمَ مَقَامَ الْمُشَقَّةِ فِىْ حَقِّ الرُّخْصَةِ سَقَطَ اِعْتِبَارُ حَقِيْقَةِ الْمُشَقَّةِ وَ يُدَارُ الْحُكْمُ عَلٰى نَفْسِ السَّفَرِ حَتَّى أَنَّ السُّلْطَانَ لَوْطَافَ فِىْ أَطْرَافِ مَمْلُكَتِهِ يَقْصُدُ بِهِ مِقْدَارَ السَّفَرِ كَانَ لَهُ الرُّخْصَةُ فِىْ الافْطَارِ وَ الْقَصْرِ

Then the Sabab will sometimes take the place of the Illat when determining the occurrence of the Illat is difficult, in order to make ease upon those to whom the laws of Shari'ah apply. Thereafter *(once the Sabab takes the place of the Illat)* **the Illat will not be considered and the ruling will be dependent upon the Sabab** *(such that the ruling will apply with the occurrence of the Sabab regardless of whether the Illat has occurred or not)***.**

An example of this *(where the Sabab takes the place of the Illat)* **in the laws of Shari'ah is deep sleep, as once it takes the place of passing wind** *(which is the actual Illat for Wudhu breaking)* **then whether wind was passed or not will not be considered and the ruling of Wudhu breaking will be dependent on deep sleep** *(whereby the Wudhu will break if one falls asleep, regardless of whether wind was passed or not)***.**

Similarly once 'Khalwatus Saheehah'[1] takes the place of sexual relations *(which is the actual Illat for the consummation of the marriage)* **then whether sexual relations occurs or not will not be considered and the ruling will be dependent on 'Khalwatus Saheehah' with regards to the complete Mehr** *(the entire Mehr will become Waajib after 'Khalwatus Saheehah')* **and incumbency of Iddah** *(if the wife is divorced after 'Khalwatus Saheehah' then she will have to remain in Iddah)***.**

Similarly once travelling *(more than 80 km)* **takes the place of difficulty** *(which is the actual Illat for lessening Salaah on a journey)* **with regards to lessening Salaah** *(Qasr while on a journey)* **then whether there is actually difficulty or not will not be considered and the ruling of lessening Salaah** *(Qasr)* **will be dependent on travelling** *(more than 80 km)* **such that if the king travels on the outskirts of his kingdom in order to the extent of a journey** *(80 km)***, he will be excused from fasting and may lessen Salaah** *(even if there is no difficulty in that journey)***.**

Other than the Sabab can be called the Sabab

وَ قَدْ يُسَمّٰى غَيْرُ السَّبَبِ سَبَباً مَجَازًا كَالْيَمِيْنِ يُسَمّٰى سَبَباً لِلْكَفَّارَةِ وَ اِنَّهَا لَيْسَتْ بِسَبَبٍ فِى الْحَقِيْقَةِ فَاِنَّ السَّبَبَ لاَ يُنَافِىْ وُجُوْبَ الْكَفَّارَةِ فَاِنَّ الْكَفَّارَةَ اِنَّمَا تَجِبُ بِالْحِنْثِ وَبِهِ يَنْتَهِى الْيَمِيْنُ وَكَذٰلِكَ تَعْلِيْقُ الْحُكْمِ بِالشَّرْطِ كَالطَّلاَقِ وَالْعِتَاقِ يُسَمّٰى سَبَباً مَجَازًا وَ أَنَّه لَيْسَ بِسَبَبٍ فِى الْحَقِيْقَةِ لاَنَّ الْحُكْمَ اِنَّمَا يَثْبُتُ عِنْدَ وُجُوْدِ الشَّرْطِ وَالتَّعْلِيْقُ يَنْتَهِى بِوُجُوْدِ الشَّرْطِ فَلاَ يَكُوْنُ سَبَباً مَعَ وُجُوْدِ التَّنَافِىْ بَيْنَهُمَا

[1] 'Khalwatus Saheehah' occurs when the bride and groom seclude themselves, such that if they wished to indulge in sexual intercourse they would be able to do so, even though they do not do so. After 'Khalwatus Saheehah' the marriage will be regarded as consummated.

Sometimes other than the Sabab can be called the Sabab in a manner of Majaaz. For example taking an oath is called the Sabab for Kaffaarah, whereas in reality it is not the Sabab, as the Sabab cannot oppose the ruling and taking an oath opposes the incumbency of Kaffaarah because Kaffaarah becomes Waajib on the breaking of an oath and that *(breaking an oath)* **ends the oath** *(taking an oath cannot be the Sabab for Kaffaarah because Kaffaarah only becomes Waajib when the oath is broken)***.**

Similarly making a ruling conditional, such as Talaaq or freedom, has been called the Sabab *(of Talaaq)* **in a manner of Majaaz, whereas it is not the Sabab in reality because the ruling will only apply when the condition is fulfilled and once the condition is fulfilled it will no longer remain conditional, thus it cannot be the** *(actual)* **Sabab when they oppose each other.**

The laws of Shari'ah are affixed to the Sabab

فصل

اَلأَحْكَامُ الشَّرْعِيَّةُ يَتَعَلَّقُ بِأَسْبَابِهَا وَذٰلِكَ لانَّ الْوُجُوْبَ غَائِبٌ عَنَّا فَلاَ بُدَّمِنْ عَلاَمَةٍ يَعْرِفُ بِهَا الْعَبْدُ وُجُوْبَ الْحُكْمِ وَ بِهٰذَا الاعْتِبَارِ اُضِيْفَ الأحْكَامُ اِلَى الأَسْبَابِ فَسَبَبُ وُجُوْبِ الصَّلوٰةِ اَلْوَقْتُ بِدَلِيْلِ اَنَّ الْخِطَابَ بِأَدَاءِ الصَّلٰوةِ لاَ يَتَوَجَّهُ قَبْلَ دُخُوْلِ الْوَقْتِ وَاِنَّمَا يَتَوَجَّهُ بَعْدَ دُخُوْلِ الْوَقْتِ وَالْخِطَابُ مُثْبِتٌ لِوُجُوْبِ الأَدَاءِ وَمُعَرِّفٌ لِلْعَبْدِ سَبَبَ وُجُوْبِ قَبْلَه وَ هٰذَا كَقَوْلِنَا أَدِّ ثَمَنَ الْمَبِيْعِ وَ أَدِّ نَفَقَةَ الْمَنْكُوْحَةِ وَلاَ مَوْجُوْدَ يُعَرِّفُهُ الْعَبْدَ هٰهُنَا اِلاَّ دُخُوْلُ الْوَقْتِ فَتَبَيَّنَ أَنَّ الْوُجُوْبَ يَثْبُتُ بِدُخُوْلِ الْوَقْتِ وَ لانَّ الْوُجُوْبَ ثَابِتٌ عَلٰى مَن لاَيَتَنَاوَلُهُ الْخِطَابُ كَالنَّائِمِ وَالمُغْمىٰ عَلَيْهِ وَلاَ وُجُوْبَ قَبْلَ الْوَقْتِ فَكَانَ ثَابِتاً بِدُخُوْلِ الْوَقْتِ وَ بِهٰذَا ظَهَرَ أَنَّ الْجُزْءَ الأوَّلَ سَبَبٌ لِلْوُجُوْبِ

The laws of Shari'ah are affixed to the Sabab for it *(the law becomes incumbent when the Sabab is present)***. The reason**

for this is that ALLAAH, who makes the laws Waajib upon us is not visible to us *(so we will not be able to discern when ALLAAH Ta'ala has made it Waajib to carry out)***, therefore there is a need for such a sign, from which we will be able to determine that is when the law is Waajib. Based upon this** *(that we need a sign from which we will be able to discern when the law is Waajib to carry out)* **we affixed the laws of Shari'ah to the its Sabab, such that the Sabab of Salaah being Waajib will be time** *(when the time of that Salaah sets in then only will it become Waajib)* **based on the proof that the instruction to perform Salaah does not apply before the time has set in but only after. The instruction** *(to perform Salaah)* **establishes that it is incumbent to perform and informs a person** *(as well)* **of the Sabab that makes it Waajib before the time sets in. This** *(that the act itself being Waajib is established from the Sabab and that it is Waajib to perform is established from the instruction)* **is the same as us saying, "Pay the price of the goods"** *(the price has already become incumbent upon him by the Sabab, which is the transaction itself, and our statement indicates that it is now Waajib to pay it)* **and "Pay the maintenance of your wife"** *(the maintenance has already become incumbent upon him by the Sabab, which is the Nikaah itself, and our statement indicates that it is now Waajib to pay it)***. There is nothing present here by which a person can ascertain that it is Waajib except for time, thus it will establish that Salaah becomes Waajib when the time sets in.**

(Another proof that the Sabab for Salaah being Waajib is) **Also that Salaah is Waajib on that person who cannot hear the instruction, such as one who is asleep or unconscious** *(at the time of Salaah)* **and** *(we all accept that)* **it is not Waajib before the time sets in, therefore it is established that Salaah becomes Waajib when the time sets in** *(as this Sabab*

*applies to all, even one how cannot hear the instruction such as one who is asleep or unconscious)***.**

This also establishes that the first portion of the time is the Sabab for it being Waajib *(because if the last portion were the Sabab then the Salaah can only be performed after it, which would result in the Salaah becoming Qadhaa as it will be performed out of its time)***.**

ثُمَّ بَعْدَ ذٰلِكَ طَرِيْقَانِ اَحَدُهُمَا نَقْلُ السَّبَبِيَّةِ مِنَ الْجُزْءِ الأوَّلِ اِلَى الثَّانِىْ اِذَا لَمْ يُؤَدِّ فِى الْجُزْءِ الأوَّلِ ثُمَّ اِلَى الثَّالِثِ وَالرَّابِعِ اِلٰى اَن يَنْتَهِىَ اِلٰى اٰخِرِ الْوَقْتِ فَيَتَقَرَّرُ الْوُجُوْبُ حِيْنَئِذٍ وَ يُعْتَبَرُحَالُ الْعَبْدِ فِىْ ذٰلِكَ الْجُزْءِ وَيُعْتَبَرُصِفَةُ ذٰلِكَ الْجُزْءِ وَ بَيَانُ اِعْتِبَارِ حَالِ الْعَبْدِ فِيْهِ اَنَّه لَوْ كَانَ صَبِيًّا فِىْ أوَّلِ الْوَقْتِ بَالِغًا فِىْ ذٰلِكَ الْجُزْءِ أوْ كَانَ كَافِراً فِىْ أوَّلِ الْوَقْتِ مُسْلِماً فِىْ ذٰلِكَ الْجُزْءِ أوْكَانَ حَائِضاً أوْ نُفَسَآءَ فِىْ أوَّلِ الْوَقْتِ طَاهِرَةً فِىْ ذٰلِكَ الْجُزْءِ وَجَبَتِ الصَّلٰوةُ وَعَلٰى هٰذَا جَمِيْعُ صُوَرِحُدُوْثِ الأهْلِيَةِ فِىْ اٰخِرِ الْوَقْتِ وَعَلَى الْعَكْسِ بِأنْ يَحْدُثَ حَيْضٌ أوْ نِفَاسٌ أوْ جُنُوْنٌ مُسْتَوْعِبٌ أوْ اِغْمَاءٌ مُمْتَدٌّ فِىْ ذٰلِكَ الْجُزْءِ سَقَطَتْ عَنْهُ الصَّلٰوةُ وَلَوْكَانَ مُسَافِراً فِىْ أوَّلِ الْوَقْتِ مُقِيْماً فِىْ اٰخِرِهِ يُصَلِّى اَرْبَعاً وَ لَوْ كَانَ مُقِيْماً فِىْ أوَّلِ الْوَقْتِ مُسَافِراً فِىْ اٰخِرِهِ يُصَلِّى رَكَعَتَيْنِ

Thereafter *(after it has been established that the first portion of the time is the Sabab for Salaah being Waajib)* **there are two methods** *(in which the remaining time is also a Sabab)***. One of these methods is that the Sabab transfers from the first portion to the second portion, when Salaah has not been performed in the first portion and then to the third and the forth until the last portion of the time** *(if the Salaah has not been performed)* **where Salaah being Waajib will remain. The condition of the person in that** *(last)* **time will be considered as well as the condition of that** *(last)* **time.**

What is meant by the condition of the person will be considered in that *(last)* **time is that if a person was**

immature *(not reached puberty)* **in the first portion but became mature in that** *(last)* **portion or if a person was Kaafir in the first portion and then accepted Islaam in that***(last)* **portion or was in a state of Haidh or Nifaas in the first portion but became pure in that** *(last)* **portion, then Salaah will be Waajib upon them** *(Salaah will be Waajib on the child who reached puberty, Kaafir who accepted Islaam, or woman in Haidh or Nifaas who attained purity in the last portion of the Salaah time)***. In a similar manner will all the cases wherein a person became capable of Salaah in the last portion be dealt with** *(Salaah will be Waajib on them if they were able to perform Salaah in the last portion)* **and the opposite as well, whereby a woman's Haidh or Nifaas begins, or a person goes insane for longer than a day and night, or unconscious for the remaining period of that last time, in the last portion such that Salaah will not be Waajib on them.**

If a person was a traveller in the first portion of the time and a resident in the last portion of the time, then he will read four Raqaats of Salaah *(he will not shorten his salaah)* **and if he was a resident in the first portion of the time and a traveller in the last portion, then he will read two Raqaats of Salaah** *(he will make Qasr, that is shorten his Salaah)***.**

وَ بَيَانُ اِعْتِبَارِ صِفَةِ ذٰلِكَ الْجُزْءِ أَنَّ ذَلِكَ الْجُزْءُ اِنْ كَانَ كَامِلاً تَقَرَّرَتِ الْوَظِيْفَةُ كَامِلَةً فَلاَ يَخْرُجُ عَنِ الْعُهْدَةِ بِاَدَائِهَا فِى الأَوْقَاتِ الْمَكْرُوْهَةِ وَمِثَالُه فِيْمَا يُقَالُ اِنَّ اٰخِرَ الْوَقْتِ فِى الْفَجَرِ كَامِلٌ وَ اِنَّمَا يَصِيْرُ الْوَقْتُ فَاسِداً بِطُلُوْعِ الشَّمْسِ وَ ذَلِكَ بَعْدَ خُرُوْجِ الْوَقْتِ فَيَتَقَرَّرُ الْوَاجِبُ بِوَصْفِ الْكَمَالِ فَاِذَا طَلَعَ الشَّمْسُ فِيْ اَثْنَاءِ الصَّلَوٰةِ بَطَلَ الْفَرْضُ لانَّه لاَ يُمْكِنُه اِتْمَامُ الصَّلَوٰةِ اِلاَّ بِوَصْفِ النُّقْصَانِ بِاِعْتِبَارِ الْوَقْتِ وَ لَوْ كَانَ ذَلِكَ الْجُزْءُ نَاقِصاً كَمَا فِىْ صَلٰوةِ الْعَصْرِ فَاِنَّ اٰخِرَ الْوَقْتِ وَقْتُ اِحْمِرَارِ الشَّمْسِ وَالْوَقْتُ عِنْدَه فَاسِدٌ فَتَقَرَّرَتِ الْوَظِيْفَةُ بِصِفَةِ النُّقْصَانِ وَ لِهٰذَا وَجَبَ الْقَوْلُ بِالْجَوَازِ عِنْدَه مَعَ فَسَادِ الْوَقْتِ

What is meant by the condition of that *(last)* **time will be considered is that if the last portion of time is Kaamil** *(that is it is not defective)* **then the Salaah will become Waajib on a person Kaamil** *(without defect)* **and a person will not be absolved from it by performing it in prohibited times** *(Makruh time)***. An example of this is what has been said that the last portion of time for Fajr Salaah is Kaamil and it becomes defective as the sunrises, which is after the time of Fajr has passed, thus Fajr Salaah becomes Waajib on a person** *(who has not performed it as yet)* **Kaamil. Therefore if the sun rises while he is performing Salaah then the Salaah will be invalid because it is not possible to perform the Salaah except with defect as the time is defective** *(and since the Salaah became Waajib on hi Kaamil it has to be performed Kaamil)***.**

If the last portion of time is defective, such as in Salaatul Asr *(whereby the last portion in which Asr may be read is defective)* **because it is the time when the sun reddens, which is a defective time, then the Salaah becomes Waajib with defect, therefore it becomes incumbent to say that** *(Asr)* **Salaah in this time is permissible with defect.**

The second method

وَالطَّرِيْقُ الثَّانِىْ أن يُّجَعَلَ كُلُّ جُزْءٍ مِنْ اَجْزَاءِ الْوَقْتِ سَبَباً لاَ عَلىٰ طَرِيْقِ الاِنْتِقَالِ فَاِنَّ الْقَوْلَ بِهِ قَوْلٌ بِاِبْطَالِ السَّبَبِيَّةِ الثَّابِتَةِ بِالشَّرْعِ وَلاَ يَلْزَمُ عَلٰى هَذَا تَضَاعُفُ الْوَاجِبِ فَاِنَّ الْجُزْءَ الثَّانِىْ اِنَّمَا أَثْبَتَ عَيْنَ مَا اَثْبَتَهُ الْجُزْءُ الأَوَّلُ فَكَانَ فَهٰذَا مِنْ بَابِ تَرَادُفِ الْعِلَلِ وَ كَثْرَةِ الشُّهُوْدِ فِىْ بَابِ الْخُصُوْمَاتِ

The second method *(in which the remaining time is also the Sabab)* **is making each portion of the time a Sabab** *(all at once)* **and not by transferring** *(the Sabab from one portion to*

the next) **because saying that the Sabab transfers from portion to the next is claiming that the portion which the Shari'ah has made the Sabab is not the Sabab** *(as once it transfers to the next portion, it would mean that the previous portion is no longer the Sabab whereas the Shari'ah has made it the Sabab)*. *(If someone were to object by saying that this method makes multiple Salaah Waajib as in this case each portion makes a Salaah Waajib, we would say)* **This does not make multiple Salaah Waajib** *(in that time)* **because the second portion establishes exactly what was established in the first portion** *(and not another Salaah)*, **thus it will be the same as claiming that one ruling ahs many Illat** *(which will not necessitate there being many rulings)* **and the same as having many witnesses to one case.**

The Sabab for fasting and Zakaat

وَسَبَبُ وُجُوْبِ الصَّوْمِ شُهُوْدُ الشَّهْرِ لِتَوَجُّهِ الْخِطَابِ عِنْدَ شُهُوْدِ الشَّهْرِ وَاِضَافَةِ الصَّوْمِ اِلَيْهِ وَسَبَبُ وُجُوْبِ الزَّكٰوةِ مِلْكُ النِّصَابِ النَّامِيِّ حَقِيْقَةً أَوْ حُكْماً وَ بِاِعْتِبَارِ وُجُوْدِ السَّبَبِ جَازَ التَّعْجِيْلُ فِىْ بَابِ الأَدَاءِ

The Sabab for fasting being Waajib is the coming of the month of Ramadaan because the instruction to fast applies then and fasting has been affixed to it *(the fast of this month are called 'Soumu Ramadaan', which indicate that it is the Sabab)*.

The Sabab for Zakaat being Waajib is having possession of the growing wealth *(wealth which increase in value)* **whether in Haqeeqat** *(such as stock for trade)* **or Hukman** *(such as gold and silver)* **and when the Sabab is present then prior fulfilment is permissible** *(if a person has possession of growing wealth then he may pay the Zakaat due on it before a year passes)*.

The Sabab for Hajj

وَسَبَبُ وُجوْبِ الْحَجِّ اَلْبَيْتُ لاضَافَتِهِ اِلَى الْبَيْتِ وَ عَدْمِ تَكْرَارِالْوَظِيْفَةِ فِى الْعُمْرِ وَعَلَىٰ هٰذَا لَوْ حَجَّ قَبْلَ وُجُوْدِ الاسْتِطَاعَةِ يَنُوْبُ ذٰلِكَ عَنْ حَجَّةِ الاسْلاَمِ لِوُجُوْدِ السَّبَبِ وَبِهِ فَارَقَ اَدَاءُ الزَّكَوٰةِ قَبْلَ وُجُوْدِ النِّصَابِ لِعَدْمِ السَّبَبِ

The Sabab for Hajj being Waajib is the Ka'abah because of Hajj being affixed to it *(the act of Hajj is referred to as "Hajjul Bait")* **and the fact that it is Waajib only once in a life time** *(which indicates that the Sabab is singular and occurs once, which is the Ka'abah)*. **Based upon this** *(that the Sabab for Haaj being Waajib is the Ka'abah)* **if a person performs Hajj before having the** *(financial)* **ability to do so then this will suffice for his Fardh Hajj because the Sabab** *(for the Hajj being Waajib)* **is present.**

This *(Hajj sufficing for Fardh Hajj even if one did not have the financial ability because of the Sabab being present)* **differentiates it from payment of Zakaat before having possession of the wealth, because** *(in this instance of Zakaat)* **the Sabab is not present.**

Sabab for Sadaqaatul Fitr

وَسَبَبُ وُجُوْبِ صَدَقَةِ الْفِطْرِ رَأْسٌ يَمُوْنُه وَ يَلِىَ عَلَيْهِ وَ بِاِعْتِبَارِ السَّبَبِ يَجُوْزُ التَّعْجِيْلُ حَتّٰى جَازَ اَدَائُهَا قَبْلَ يَوْمِ الْفِطْرِ وَ سَبَبُ وُجُوْبِ الْعُشْرِ اَلأَرَاضِىُ النَّامِيَةُ بِحَقِيْقَةِ الرَّيْعِ وَسَبَبُ وُجُوْبِ الْخِرَاجِ الأَرَاضِىُ الصَّالِحَةُ لِلزِّرَاعَةِ فَكَانَتْ نَامِيَةً حُكْمًا وَ سَبَبُ وُجُوْبِ الْوُضُوْءِ اَلصَّلٰوةُ عِنْدَ الْبَعْضِ وَ لِهٰذَا وَجَبَ الْوُضُوْءُ عَلٰى مَنْ وَجَبَتْ عَلَيْهِ الصَّلَوٰةُ وَلاَ وُضُوْءَ عَلٰى مَنْ لاَ صَلَوٰةَ عَلَيْهِ وَ قَالَ الْبَعْضُ سَبَبُ وُجُوْبِهِ الْحَدَثُ وَوُجُوْبُ الصَّلَوٰةِ شَرْطٌ وَ قَدْ رُوِىَ عَنْ مُحَمَّدٍ ذَلِكَ نَصًّا وَ سَبَب وَ وُجُوْبِ الْغُسْلِ اَلْحَيْضُ وَالنِّفَاسُ وَالْجَنَابَةُ

The Sabab for Sadaqaatul Fitr being Waajib is the presence of the person whose expenses he bears and those under him *(on the day of Eid)* **and as a result of the Sabab** *(being present)* **it is permissible to pay the Sadaqaatul Fitr before the day of Eid.**

The Sabab of Ushr[1] being Waajib is the land being productive *(that is it yields a produce)***.**

The Sabab of Khiraaj being Waajib is that the land must be fertile for cultivation, which will result in it being termed productive.

The Sabab for Wudhu being Waajib is Salaah, according to some, because of which Wudhu is Waajib upon those whom Salaah is Waajib upon and Wudhu is not Waajib n those upon whom Salaah is not Waajib upon. Some are of the opinion that the Sabab for Wudhu being Waajib is being in a state of lesser impurity *(Hadath)* **and the Salaah being Waajib is a condition** *9for Wudhu being Waajib, thus it will become Waajib when the condition is fulfilled)***., which has been reported to be the opinion of Imaam Muhammed .**

The Sabab for Ghusal being Waajib is being in a state of Haidh, Nifaas and Janaabat *(being in a state of higher impurity)***.**

Prevention of the Illat and ruling

فصل

قَالَ الْقَاضِىُ الامَامُ أبُوْ زَيْدٍ اَلْمَوَانِعُ اَرْبَعَةُ اَقْسَامٍ مَانِعٌ يَمْنَعُ اِنْعِقَادَ الْعِلَّةِ وَ مَانِعٌ يَمْنَعُ تَمَامَهَا وَ مَانِعٌ يَمْنَعُ اِبْتِدَاءَ الْحُكْمِ وَ مَانِعٌ يَمْنَعُ دَوَامَه نَظِيْرُ

[1] Ushr is a tax on the produce of land and Khiraaj is a land tax.

الأَوَّلِ بَيْعُ الْحُرِّ وَ الْمَيْتَةِ وَ الدَّمِ فَاِنَّ عَدَمَ الْمَحَلِّيَةِ يَمْنَعُ اِنْعِقَادَ التَّصَرُّفِ عِلَّةً لافَادَةِ الْحُكْمِ وَعَلٰى هٰذَا سَائِرُ التَّعْلِيْقَاتِ عِنْدَنَا فَاِنَّ التَّعْلِيْقَ يَمْنَعُ اِنْعِقَادَ التَّصَرُّفِ عِلَّةً قَبْلَ وُجُوْدِ الشَّرْطِ عَلَى مَا ذَكَرْنَاهُ وَلِهٰذَا لَوْ حَلَفَ لاَ يُطَلِّقُ اِمْرَأَتَه فَعَلَّقَ طَلاَقَ اِمْرَأَتِهِ بِدُخُوْلِ الدَّارِ لاَ يَحْنَثُ

Qaadhi Abu Zaid says that prevention can occur in four ways;

1- Prevention of the Illat from occurring.

2- Prevention of the Illat from completing.

3- Prevention of the ruling from applying from inception.

4- Prevention of the ruling from applying perpetually.

An example of the first *(prevention of the Illat from occurring)* **is the sale of a free person, carrion and blood. The reason for this is these items not being objects of sale** *(they cannot be bought or sold)* **prevents the Illat from occurring** *(which is offering to sell and acceptance)* **which in turn prevents the ruling** *(of change of ownership)* **from applying. In a similar manner** *(also examples of this type of prevention)* **are all conditional statements according to us** *(Hanafi scholars)* **because conditional statements prevent the occurrence of the illat for the ruling before the condition is fulfilled** *(it only becomes Illat once the condition is met)***, as we have mentioned previously** *(under the discussion of whether the ruling of a conditional statement applies immediately or not)***. This is why if a person takes an oath that he will not divorce his wife and then gives a Talaaq conditional on entry** *(where he says, "You are divorced if you enter the house")***, his oath will not break** *(as the Talaaq does apply till the condition is met)***.**

وَمِثَالُ الثَّانِيْ هَلاَكُ النِّصَابِ فِىْ اَثْنَاءِ الْحَوْلِ وَ اِمْتِنَاعُ اَحَدِ الشَّاهِدَيْنِ عَنِ الشَّهَادَةِ وَرَدُّ شَطْرِ الْعَقْدِ

An example of the second *(prevention of the Illat from completing)* **is loss of the Nisaab** *(amount which makes Zakaat Waajib)* **during the course of the year** *(as having the Nisaab is the illat for Zakaat being Waajib and possessing it for a full year completes it)* **and refusal of one of the two witnesses to testify** *(testimony is the illat for establishing the right of another and is complete with the testimony of two)* **and declining to purchase** *(ownership is established in a sales transaction by proposal to purchase and acceptance and is completed with the acceptance of the buyer)***.**

وَمِثَالُ الثَّالِثِ اَلْبَيْعُ بِشَرْطِ الْخِيَارِ وَبَقَاءُ الْوَقْتِ فِىْ حَقِّ صَاحِبِ الْعُذْرِ

An example of the third *(prevention of the ruling from applying from inception)* **is a sales transaction with the right to cancel or approve the transaction** *(the illat which establishes ownership is complete by proposal and acceptance but ownership will not apply from inception because of the right to cancel or approve the transaction)* **and time remaining for one who is excused** *(from Tahaarat, the ruling of Wudhu breaking is prevented from applying as long as the time for that Salaah remains)***.**

وَمِثَالُ الرَّابِعِ خِيَارُ الْبُلُوْغِ وَالْعِتْقِ وَالرُّؤْيَةِ وَعَدَمِ الْكَفَائَةِ وَالانْدِمَالُ فِىْ بَابِ الْجَرَاحَاتِ عَلٰى هٰذَا الأَصْلِ

An example of the fourth *(Prevention of the ruling from applying perpetually)* **is Khiyaar Buloogh**[1] *(the ruling of Nikaah applies but does not remain perpetually as once the*

[1] Khiyaar Buloogh:- If the Nikaah of an immature child was performed by someone other than the father or grandfather then once the child reaches Puberty he will have the right to annul the Nikaah.

*child reaches puberty then she may have the Nikaah annulled)***, Khiyaar Itq**[1] *(the ruling of Nikaah applies but does not remain perpetually as when the slave is set free, she may have the Nikaah annulled)***, Khiyaar Ru'yat**[2] *(ownership is established but does not remain perpetually as once the buyer sees the item he may cancel the transaction)***, lack of compatibility** *(the ruling of Nikaah applies but the representatives of the bride she may have the Nikaah annulled)* **and if the wound heals** *(the ruling of Diyyah applies but is lifted once the wound heals)***.**

وَ هٰذَا عَلىٰ اِعْتِبَارِ جَوَازِ تَخْصِيْصِ الْعِلَّةِ الشَّرْعِيَّةِ فَاَمَّا عَلىٰ قَوْلِ مَنْ لَا يَقُوْلُ بِجَوَازِ تَخْصِيصِ الْعِلَّةِ فَالْمَانِعُ عِنْدَه ثَلٰثَةُ اَقْسَامٍ مَانِعٌ يَمْنَعُ اِبْتِدَاءَ الْعِلَّةِ وَمَانِعٌ يَمْنَعُ تَمَامَهَا وَ مَانِعٌ يَمْنَعُ دَوَامَ الْحُكْمِ وَ اَمَّا عِنْدَ تَمَامِ الْعِلَّةِ فَيَثْبُتُ الْحُكْمَ لاَ مُحَالَةَ وَ عَلىٰ هٰذا كُلُّ مَا جَعَلَهُ الْفَرِيْقُ الْاَوَّلُ مَانِعًا لِثُبُوْتِ الْحُكْمِ جَعَلَهُ الْفَرِيْقُ الثَّانِىْ مَانِعًا لِتَمَامِ الْعِلَّةِ وَ عَلىٰ هٰذا الْاَصْلِ يَدُوْرُ الْكَلاَمُ بَيْنَ الْفَرِيْقَيْنِ

This *(division of the types of prevention)* **is based on considering 'Takhseesul Illat'** *(acceptance of the principle that the Illat will be present but the ruling may not apply)* **but if you do not accept 'Takhseesul Illat' then prevention will be of three types;**

1- Prevention of the Illat from beginning.

2- Prevention of the Illat from completing.

3- Prevention of the ruling from applying perpetually.

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[1] Khiyaar itq:- A married slave will have the right to annul the Nikaah when they are set free.

[2] Khiyaar Ru'yat:- If a person purchases something without seeing it, the he will have the right to either cancel or approve the transaction when he sees it.

As far as when the illat is complete is concerned, the ruling will apply without a doubt. In this manner whatever the first group has made an example of prevention of the ruling the second group has made an example of the Illat being incomplete. On this principle *(that the second group has incorporated the third type into the second)* **the opinions vary between the two groups.**

Fardh and Waajib

فَصْلٌ

اَلْفَرْضُ لُغَةً هُوَ التَّقْدِيْرُ وَ مَفْرُوْضَاتُ الشَّرْعِ مُقَدَّرَاتُه بِحَيْثُ لاَ يَحْتَمِلُ الزِّيَادَةَ وَ النُّقْصَانَ وَ فِىْ الشَّرْعِ مَا ثَبَتَ بِدَلِيلٍ قَطْعِىٍّ لاَ شُبْهَةَ فِيْهِ وَ حُكْمُه لُزُوْمُ الْعَمَلِ بِهِ وَ الْاِعْتِقَادِ بِهِ وَ الْوُجُوْبُ هُوَ السُّقُوْطُ يَعْنِىْ مَا يَسْقُطُ عَلَى الْعَبْدِ بِلاَ اِخْتِيَارِ مِنْهُ وَقِيْلَ هُوَ مِنَ الوَجَبَةِ وَ هُوَ الْاِضْطِرَابُ سُمِّىَ الْوَاجِبْ بِذَلِكَ لِكَوْنِهِ مُضْطَرِباً بَيْنَ الْفَرْضِ وَ النَّفْلِ فَصَارَ فَرْضاً فِىْ حَقِّ الْعَمَلِ حَتّٰى لاَ يَجُوْزُ تَرْكُه وَ نَفْلاً فِىْ حَقِّ الاِعْتِقَادِ فَلاَ يَلْزَمُنَا الاعْتِقَادُ بِهِ جَزْماً وَ فِى الشَّرْعِ هُوَ مَا ثَبَت بِدَلِيْلٍ فِيْهِ شُبْهَةٌ كَالآيَةِ الْمُؤَوَّلَةِ وَ الصَّحِيْحُ مِنَ الاحَادِ وَ حُكْمُه مَا ذَكَرْنَا

The dictionary meaning of Fardh is to stipulate and the Faraaidh *(plural of Fardh)* **of Shari'ah is what it has stipulated such that it cannot be increased or decreased** *(but exactly what the Shari'ah has stipulated is compulsory to fulfil)***, in Shari'ah, Fardh refers to whatever has been established by convincing proof, which has no doubt in it. The ruling of Fardh is that it is obligatory to act upon it and believe in it** *(such that if a person denies its incumbency, he will be out of the fold of Islaam)***.**

The dictionary meaning of Waajib is fall, that is it *(Waajib)* **fell on to a person without his choice. It has also been said that it is derived from 'وَجَبَةِ', which means undecided. Waajib has been called Waajib because it is undecided**

between being Fardh and Nafl, thus it is regarded as Fardh as far as practice is concerned *(it is compulsory to practice upon it)* **such that it is impermissible to discard it, and Nafl as far as belief is concerned such that it is not incumbent upon us to believe it to be certain** *(whereby the one who denies will not be out of the fold of Islaam)***. In Shari'ah, Waajib is that which has been established by proof which has a slight amount of uncertainty, such as verses which have been interpreted** *(the derived meaning is a result of Ta'weel)***and Saheeh Ahaadeeth and the ruling of Waajib is what we have already mentioned** *(it is compulsory to practice upon but one who denies it's incumbency will not cast out of the fold of Islaam)***.**

Sunnat and Nafl

وَ السُّنَّةُ عِبَارَةٌ عَنِ الطَّرِيْقَةِ الْمَسْلُوْكَةِ الْمَرْضِيَّةِ فِىْ بَابِ الدِّيْنِ سَوَاءٌ كَانَتْ مِنْ رَسُوْلِ اللهِ ﷺ أوْ مِنَ الصَّحَابَةِ قَالَ عَلَيْهِ السَّلاَمِ عَلَيْكُمْ بِسُنَّتِىْ وَسُنَّةِ الْخُلَفَاءِ مِنْ بَعْدِىْ عَضُّوْا عَلَيْهَا بِالنَّوَاجِذْ وَحُكْمُهَا أَنْ يُطَالَبَ الْمَرْءُ بِاِحْيَائِهَا وَ يَسْتَحِقُّ الْمَلاَمَةَ بِتَرْكِهَا اِلاَّ أَنْ يَتْرُكَهَا بِعُذْرٍ وَالنَّفْلُ عِبَارَةٌ عَنِ الزِّيَادَةِ وَ الْغَنِيْمَةِ تُسَمّٰى نَفْلاً لانَّهَا زِيَادَةٌ عَلٰى مَا هُوَ الْمَقْصُوْدُ مِنَ الْجِهَادِ وَ فِى الشَّرْعِ عِبَارَةٌ عَمَّا هُوَ زِيَادَةٌ عَلَى الْفَرَائِضِ وَ الْوَاجِبَاتِ وَحُكْمُه أَنْ يُّثَابَ الْمَرْءُ عَلٰى فِعْلِهِ وَ لاَ يُعَاقَبُ بِتَرْكِهِ وَالنَّفْلُ وَ التَّطَوُّعُ نَظِيْرَانِ

Sunnat refers to the preferred path adopted in matters of Deen, whether it be the practice of Rasulullaah ﷺ or of the Sahabah. Rasulullaah ﷺ has said, "Mu Sunnat is incumbent upon you and the Sunnat of the Khulafaa after me, hold on to it firmly". The ruling of Sunnat is that a person should attempt to revive it and show contempt on its disregard except where it is disregarded with a valid *(Shar'ie)* **excuse**.

Nafl literally means additional and the spoils of war are referred to as Nafl because it is additional to the actual

purpose of Jihaad *(which is to establish the Deen of ALLAAH)*. **In Shari'ah, Nafl refers to those acts which are additional to those which are Fardh and Waajib and the ruling of Nafl is that one will be rewarded by practicing upon it and will not be punished for disregarding it. Nafl and 'Tathouwu'a'** *('تَطَوُّعِ')* **are the same** *(according to the terminology of the Fuqahaa)*.

Definition of Azeemat

فصل

اَلْعَزِيْمَةُ هِيَ الْقَصْدُ اِذَا كَانَ فِيْ نِهَايَةِ الْوكَادَةِ وَ لِهٰذَا قُلْنَا اِنَّ الْعَزْمَ عَلَى الْوَطْئِ عَوْدٌ فِيْ بَابِ الظِّهَارِ لانَّه كَالْمَوْجُوْدِ فَجَازَ أَنْ يُعْتَبَرَ مَوْجُوْداً عِنْدَ قِيَامِ الدَّلاَلَةِ وَ لِهٰذَا لَوْ قَالَ اَعْزِمُ يَكُوْنُ حَالِفاً وَ فِى الشَّرْعِ عِبَارَةٌ عَمَّا لَزِمَنَا مِنَ الأَحْكَامِ اِبْتِدَاءً سُمِّيَتْ عَزِيْمَةً لانَّهَا فِيْ غَايَةِ لِوَكَادَةٍ سَبَبُهَا وَ هُوَ كَوْنُ الامِرِ مُفْتَرِضَ الطَّاعَةِ بِحُكْمِ أنَّه اِلٰهُنَا وَنَحْنُ عَبِيْدُه وَ اَقْسَامُ الْعَزِيْمَةِ مَا ذَكَرْنَا مِنَ الْفَرْضِ وَ الْوَاجِبِ

Azeemat literally means firm resolve, which is why we say that if a person firmly resolves to indulge in sexual relations with his spouse whom he has compared to his blood relative is retraction *(and the Kaffaarah of Thihaar will become Waajib upon him just as if he actually indulged in sexual relations with her)* **because it is the same as sexual relations and will therefore be permissible to consider it as perpetrated when proof for it is established. Based upon this** *(that firmly resolving to do something is the same as carry the act out)* **if a person says, "I firmly resolved to..."** *(for example, "I firmly resolved to give you a dirham")* **it will be taking an oath** *(and his statement will actually mean, "I take an oath to give you a dirham", whereby Kaffaarah will be incumbent upon him if he fails to do so)*. **In Shari'ah, Azeemat refers to those laws of Shari'ah which are incumbent upon us from the beginning as they are compulsory because of**

their Sabab being compulsory. The Sabab of the laws of Shari'ah is that it is compulsory to obey the One giving the orders *(i.e. ALLAAH Ta'ala)* **because ALLAAH is our Master and we are His servants** *(and it is compulsory for the servant to obey his master)*. **The constituents of Azeemat is what we have already mentioned of Fardh and Waajib.**

Definition of Rukhsat

وَ اَمَّا الرُّخْصَةُ فَعِبَارَةٌ عَنِ الْيُسْرِ وَ السُّهُوْلَةِ وَ فِى الشَّرْعِ صَرْفُ الأَمْرِ مِنْ عُسْرٍ اِلٰى يُسْرٍ بِوَاسِطَةِ عُذْرٍ فِى الْمُكَلَّفِ وَ اَنْوَاعُهَا مُخْتَلِفَةٌ لِاِخْتِلاَفِ اَسْبَابِهَا وَ هِىَ اَعْذَارُ الْعِبَادِ وَ فِى الْعَاقِبَةِ تَؤُوْلُ اِلٰى نَوْعَيْنِ اَحَدُهُمَا رُخْصَةُ الْفِعْلِ مَعَ بَقَاءِ الْحُرْمَةِ بِمَنْزِلَةِ الْعَفْوِ فِىْ بَابِ الْجِنَايَةِ وَ ذٰلِكَ نَحْوُ اِجْرَاءِ كَلِمَةِ الْكُفْرِ عَلَى اللِّسَانِ مَعَ اِطْمِيْنَانِ الْقَلْبِ عِنْدَ الاِكْرَاهِ وَ سَبِّ النَّبِيِّ ﷺ وَ اِتْلاَفِ مَالِ الْمُسْلِمِ وَقَتْلِ النَّفْسِ ظُلْماً وَحُكْمُه اَنَّه لَوْ صَبَرَ حَتّٰى قُتِلَ يَكُوْنُ مَاجُوْراً لِاِمْتِنَاعِهِ عَنِ الْحَرَامِ تَعْظِيْماً لِنَهْىِ الشَّارِعِ عَلَيْهِ السَّلاَمُ وَالنَّوْعُ الثَّانِىْ تَغْيِيْرُ صِفَةِ الْفِعْلِ بِأَنْ يَّصِيْرَ مُبَاحاً فِىْ حَقِّهِ قَالَ اللهُ تَعَالٰى {فَمَنِ اضْطُرَّ فِىْ مَخْمَصَةٍ } وَ ذٰلِكَ نَحْوَ الاِكْرَاهِ عَلٰى اَكْلِ الْمَيْتَةِ وَ شُرْبِ الْخَمْرِ وَ حُكْمُه اَنَّه لَوْ اِمْتَنَعَ عَنْ تَنَاوُلِهِ حَتّٰى يَكُوْنَ اٰثِماً بِاِمْتِنَاعِهِ عَنِ الْمُبَاحِ وَ صَارَ كَقَاتِلِ نَفْسِهِ

Rukhsat literally means ease and ease in Shari'ah is changing the order from one of difficulty to ease due to a *(valid Shar'ie)* **excuse. The types of Rukhsat vary due to difference in the Sabab, which is the excuse of the servant** *(which warrants ease)*.

In punishments, Rukhsat is of two types. One type is permission to carry out the act while it still remains Haraam, such as forgiveness of a violent act *(whereby the violent act still remains Haraam despite being pardoned by the victim)*, **or similar to uttering a statement of Kufr, swearing Nabi ﷺ, destroying the property of another Muslim and**

killing another wrongfully all under duress, while having Imaan in one's heart *(even thought the uttering of such statements of Kufr remain Haraam, it is permitted under duress)*. **The ruling** *(of the first type, whereby the act still remains Haraam despite permission being granted to carry it out)* **is that if the person will be patient** *(and not indulge in that act)* **until he is killed, he will be greatly rewarded** *(in the Aakhirah)* **because of abstaining from that which was prohibited by Rasulullaah .**

The second type is altering the characteristic of the act such that it becomes permissible for him to carry out. ALLAAH Ta'ala has said,

"So whoever is forced *(to eat these forbidden goods)* **because of starvation"** *(Surah Maa'idah: 3)*

This *(second type of Rukhsat)* **is like consuming carrion and drinking wine** *(in dire circumstances such as starvation)*. **The ruling of this second type is that if he abstains from eating until he is killed** *(or dies)* **then he will be sinful because he abstained from that which was permissible for him, like a person who commits suicide.**

Substantiating without proof

فَصل

اَلاحْتِجَاجُ بِلاَ دَلِيْلٍ اَنْوَاعٌ مِنْهَا اَلاِسْتِدْلاَلُ بِعَدَمِ الْعِلَّةِ عَلٰى عَدَمِ الْحُكْمِ مِثَالُه اَلْقَئُ غَيْرُ نَاقِض لانَّه لَمْ يَخْرُجُ مِنَ السَّبِيْلَيْنِ وَ الأخُ لاَ يَعْتِقُ عَلَى الأخِ لانَّه لاَوِلاَدَ بَيْنَهُمَا

Substantiating without proof is of many types; amongst them *(one method is)* **is substantiating that the non-existence of the Illat results in the ruling not being present. An example of this is** *(saying that)* **vomiting does not break**

Wudhu because it has not been excreted from one of the two privates parts *(since the Illat, excretion from the private parts, is not present the ruling, that Wudhu breaks, will not apply)* **and that a person becoming owner of his brother will not result in him being set free because there is not parentage** *(since one is not the parent of the other, which is the Illat for freedom, the ruling, of the slave being set free, will not apply)***.**

وَسُئِلَ مُحَمَّدٌ أَيَجِبُ الْقِصَاصُ عَلَى شَرِيْكِ الصَّبِيِّ قَالَ لاَ لِانَّ الصَّبِيَّ رُفِعَ عَنْهُ الْقَلَمُ قَالَ السَّائِلُ فَوَجَبَ أَنْ يَجِبَ عَلىٰ شَرِيْكِ الأَبِ لأَنَّ الأَبَ لَمْ يُرْفَعْ عَنْهُ الْقَلَمُ فَصَارَ التَّمَسُّكُ بِعَدَمِ الْعِلَّةِ عَلىٰ عَدَمِ الْحُكْمِ بِمَنْزِلَةِ مَا يُقَالُ لَمْ يَمُتْ فُلاَنٌ لأَنَّه لَمْ يَسْقُطْ مِنَ السَّطْحِ

(Another example of substantiating that the non-existence of the Illat results in the ruling not being present is when) **Imaam Muhammed was asked whether there is Qisaas** *(death penalty)* **on a person who assisted a child in murder, to which he replied, "No** *(Qisaas will not be Waajib on both)***, because the child is not accountable for his actions." The questioner said, "It is proven that Qisaas will be Waajib on the person who assisted the father** *(in the murder of his son)* **because the father is accountable for his actions** *(thus just as the Qisaas will only be Waajib on the assistant, in the above ruling it should also only be Waajib on the assistant of the child)***.** *(The author says)* **Substantiating that the non-existence of the Illat results in the ruling not being present** *(as the questioner did)* **is like saying that a certain person did not die because he did not fall from the roof** *(whereas there are other ways in which he could have died, thus similarly the non-existence of the Illat does not necessarily guarantee that the ruling will not apply, as it is possible that it can be applied through another means)***.**

اِلاَّ اِذَا كَانَتْ عِلَّةَ الْحُكْمِ مُنْحَصِرَةً فِيْ مَعْنٰى فَيَكُوْنُ ذٰلِكَ الْمَعْنٰى لاَزِماً لِلْحُكْمِ فَيُسْتَدَلُّ بِاِنْتِفَائِهِ عَلٰى عَدَمِ الْحُكْمِ مِثَالُهُ مَا رُوِىَ عَنْ مُحَمَّدٍ اَنَّه قَالَ وَلَدُ الْمَغْصُوْبَةِ لَيْسَ بِمَضْمُوْنٍ لِاَنَّه لَيْسَ بِمَغْصُوْبٍ وَ لاَ قِصَاصَ عَلَى الشَّاهِدِ فِيْ مَسْئَلَةِ شُهُوْدِ الْقِصَاصِ اِذَا رَجَعُوْا لِاَنَّه لَيْسَ بِقَاتِلٍ وَ ذٰلِكَ لِاَنَّ الْغَصْبَ لاَزِمٌ لِضَمَانِ الْغَصْبِ وَ الْقَتْلُ لاَزِمٌ لِوُجُوْدِ الْقِصَاصِ

(Substantiating the non-existence of the Illat results in the ruling not applying is substantiating without proof) **Except when the ruling is limited to that one characteristic** *(Illat)***, whereby that characteristic is incumbent for the application of the ruling. In such an instance it will be correct to substantiate that the ruling does not apply when the Illat is not present. An example of this is what has been narrated from Imaam Muhammed that the child born from an illegally seized slave is will not be recompensed as it was not seized and there is no Qisaas on the witness in the case where a witness retracts his testimony** *(when he testified against someone in a murder trial)* **because he did not murder anyone because illegal seizure is what makes recompense Waajib and murder is what makes Qisaas Waajib.**

وَ كَذٰلِكَ التَّمَسُّكُ بِاِسْتِصْحَابِ الْحَالِ تَمَسُّكٌ بِعَدَمِ الدَّلِيْلِ اِذْ وُجُوْدُ الشَّيْئِ لاَ يُوْجِبُ بَقَائَه فَيَصْلُحُ لِلْدَّفْعِ دُوْنَ الْاِلْزَامِ وَعَلٰى هٰذَا قُلْنَا مَجْهُوْلُ النَّسَبِ لَوْ اِدَّعٰى عَلَيْهِ اَحَدٌ رِقاًّ ثُمَّ جَنٰى عَلَيْهِ جِنَايَةً لاَ يَجِبُ عَلَيْهِ اَرْشُ الْحُرِّ لِأَنَّ اِيْجَابَ اَرْشِ الْحُرِّ اِلْزَامٌ فَلاَ يَثْبُتُ بِلاَ دَلِيْلٍ

In a similar manner *(as substantiating that the non-existence of the Illat results in the ruling not being present is substantiating without proof so too is)* **substantiating from the condition of a something** *(in the past)* **is substantiating without proof. The reason for this is that the presence of something** *(for a period of time)* **does not necessitate its perpetuity** *(that it remained like that forever)***, thus the**

condition of something *(in the past)* **can be used to negate but not to affirm** *(as it is possible that its condition changed)***. Based upon this** *(that it can be used to negate but not to affirm)* **we say that a person whose lineage is unknown is a free person, if someone claims him to be his slave** *(here the condition of his lineage being unknown is used to negate him being a slave)* **and if a person then injures him** *(the person whose lineage is unknown)* **then the punishment of having injured a free man will not be carried out n the perpetrator** *(because his condition of his lineage being unknown can only be used to negate and not to affirm)* **because making the punishment of injuring a free person is affirming** *(that he is free)* **and this cannot be established without proof.**

وَ عَلىٰ هٰذَا قُلْنَا اِذَا زَادَ الدَّمُ عَلىٰ الْعَشْرَةِ فِى الْحَيْض وَلِلْمَرأةِ عَادَةٌ مَعْرُوْفَةٌ رُدَّتْ اِلىٰ أيَّامِ عَادَتِهَا وَ الزَّائِدُ اِسْتِحَاضَةٌ لأنَّ الزَّائِدَ عَلىٰ الْعَادَةِ اِتَّصَلَ بِدَمِ الْحَيْضِ وَ بِدَمِ الاسْتِحَاضَةِ فَاحْتَمَلَ الأمْرَيْنِ جَمِيْعًا فَلَوْ حَكَمْنَا بِنَقْضِ الْعَادَةِ لَزِمَنَا الْعَمَلُ بِلاَ دَلِيْلٍ وَ كَذَلِكَ اِذَا ابْتَدَأتْ مَعَ الْبُلُوْغِ مُسْتَحَاضَةً فَحَيْضَتُهَا عَشَرَةٌ تَحْتَمِلُ الْحَيْضَ وَ الْاِسْتِحَاضَةَ فَلَوْ حَكَمْنَا بِارْتِفَاعِ الْحَيْضِ لَزِمَنَا الْعَمَلُ بِلاَ دَلِيْلٍ بِخِلاَفِ مَا بَعْدَ الْعَشَرَةِ لِقِيَامِ الدَّلِيْلِ عَلىٰ أنَّ الْحَيْضَ لَا تَزِيْدُ عَلَى الْعَشَرَةِ

Based upon this *(that a ruling cannot be established without proof)* **we say that if a woman bleeds for more than ten days and she has a previous known habit, then** *(the number of days of)* **her previous habit will be Haidh and the extra days** *(more than her previous habit)* **will be Istihaadhah. The reason for this is that the days which exceed her previous habit consist of the blood of Haidh and Istihaadhah, having the possibility of being either one. If we were to say that her Habit changed then we would be cancelling her previous habit without proof** *(which is impermissible as mentioned previously)***.**

Similarly if a girl attains maturity (*begins to menstruate)* **with Istihaadhah** *(she bleeds longer than ten days the first time she menstruates)***, then her period of Haidh will be ten days** *(and the extra days Istihaadhah)***. The reason for this is the bleeding before ten days can be Haidh or Istihaadhah and if we were to say that Haidh ended** *(before ten days and the other days are Istihaadhah)* **then we would be acting without proof as opposed to** *(saying)* **the blood which exceeds ten days** *(is Istihaadhah)* **because there is proof that Haidh does not exceed ten days** *(the Hadeeth, "Haidh does not exceed ten days")***.**

وَ مِنَ الدَّلِيْلِ عَلىٰ أَنَّ لاَ دَلِيْلَ فِيْهِ اِلاَّ حُجَّةً لِلدَّفعِ دُوْنَ الاِلْزَامِ مَسْئَلَةُ الْمَفْقُوْدِ فانه لاَ يَسْتَحِقُّ غَيْرُه مِيْرَاثَهُ وَ لَوْ مَاتَ مِنْ اَقَارِبِهِ حَالَ فَقْدِهِ لَا يَرِثُ هُوَ مِنْهُ فَانْدَفَعَ اِسْتِحْقَاقُ الْغَيْرِ بِلاَ دَلِيْلٍ وَ لَمْ يَثْبُتُ لَهُ الْاِسْتِحْقَاقُ بِلاَ دَلِيْلٍ

A proof that the condition of something *(in the past)* **is a proof for negation and not affirmation is the ruling regarding a missing person** *(whose whereabouts or death cannot be ascertained)* **because no person will have the right to inherit from him and if one of his relatives were to die while he is missing, he will not inherit thus** *(his previous condition of being alive)* **will negate the right of another to inherit from him and** *(his previous condition of being alive)* **will not affirm his right to inherit.**

A reply to an objection

فَاِنْ قِيْلَ قَدْ رُوِىَ عَنْ اَبِىْ حَنِيْفَةَ أَنَّه قَالَ لاَ خُمْسَ فِىْ الْعَنْبَرِ لِأنَّ الْاَثْرَ لَمْ يَرِدْ بِهِ وَ هُوَ التَّمَسُّكُ بِعَدَمِ الدَّلِيْلَ قُلْنَا اِنَّمَا ذُكِرَ ذَلِكَ فِىْ بَيَانِ عُذْرِهِ فِىْ اَنَّه لَمْ يَقُلْ بِالْخُمْسِ فِى الْعَنْبَرِ وَ لِهٰذَا رُوِىَ اَنَّ مُحَمَّدًا سَأَلَهُ عَنِ الْخُمْسِ فِى الْعَنْبَرِ مَا بَالُ الْعَنْبَرِ لاَ خُمْسَ فِيْهِ قَالَ لِاَنَّه كَالسَّمَكِ فَقَالَ مَا

بَالُ السَّمَكِ لاَ خُمْسَ فِيْهِ قَالَ لِاَنَّه كَالْمَاءِ وَ لاَ خُمْسَ فِيْهِ وَ اللهُ تَعَالىٰ اَعْلَمُ بِالصَّوَابِ

If someone were to say that it has been reported that Imaam Abu Hanifah said, "There is no Khums in whales because there is no narration regarding it" whereas this is substantiation without proof *(which is impermissible)***. We would say that Imaam Abu Hanifah said "because there is no narration regarding it" so as to make clear his excuse for** *(making Qiyaas and)* **not saying that Khums is due** *(Imaam Abu Hanifah did not pass the ruling without proof but derive this ruling through Qiyaas)***. Because of this** *(that his statement, "because there is no narration regarding it" is in actual fact his excuse for making Qiyaas)* **it has been narrated that Imaam Muhammed asked him regarding Khums in whales enquiring "what is it about whales that there is no Khums in it?" To which Imaam Abu Hanifah replied, "It is like fish and there is no Khums in it". Imaam Muhammed then asked, "What is it about fish that there is no Khums in it?" Imaam Abu Hanifah replied, "It is like water** *(because it lives in water)* **and there is no Khums in water".**

Translation edited by
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(May ALLAAH protect him)